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# REVIEW

OF THE

Testimony given before the General Court Martial,

UPON THE TRIAL OF

BRIG. GENERAL GEORGE TALCOTT,

IN JUNE AND JULY, 1851;

AND OF

THE PROCEEDINGS OF THE COURT.

BY A COUNSELLOR AT LAW.

TO WHICH IS APPENDED

A COPY OF THE RECORD OF THE TRIAL.



ALBANY:  
JOEL MUNSELL, 58 STATE STREET,  
1851.



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## PREFATORY NOTE.

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The reader of the following Review must not expect eloquence, or even the graces of composition. The subject is one of dry fact and drier law. There was no short and easy road to a conclusion in such a case. It presents an unusual mass of testimony requiring to be carefully scanned and compared; and there are intricate questions of evidence to be discussed. This could be done in a manner to satisfy the judgment of those sincerely disposed to arrive at the truth, only by a long and detailed examination of many minute circumstances and particulars. Hence the unexpected length of the article.

Although prepared in one sense, in a professional capacity, yet it is not the result of professional labor in the ordinary sense. It is the free, gratuitous offering of a friend of the accused, who, in common with thousands, was astonished at the verdict and sentence of the court; and who determined to satisfy his own mind, by the impartial exercise of his best faculties in a thorough examination of the case. Having done so, he deemed it a solemn duty to lay before the public, the grounds of his convictions. The result is before the reader. Gen. Talcott, whether able or not, will never be called upon for any compensation, nor will he be permitted to make any, but that of his good will and friendship.

The writer has not deemed it necessary to add his name to this Review. Desirous only to establish the truth and to maintain justice, he would have the facts and arguments he has exhibited speak for themselves, without the adventitious aid of any name, and without being prejudiced by it.

Some errors will be seen in the printed copy of the record of the trial. So far as they have been discovered, they are the errors of the manuscript copy furnished to Gen. Talcott.



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PROCEEDINGS OF A GENERAL COURT MARTIAL  
FOR THE  
**TRIAL OF BREVET BRIG. GEN. GEORGE TALCOTT,**  
**COLONEL OF THE ORDNANCE DEPARTMENT,**  
Convened at Washington, June 23, 1851,  
BY ORDER OF THE PRESIDENT OF THE UNITED STATES.  
MAJOR GENERAL TWIGGS, *President of the Court.*  
MAJOR LEE, *Judge Advocate.*

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PROCEEDINGS  
OF A  
GENERAL COURT MARTIAL,  
ASSEMBLED AT WASHINGTON CITY, D. C., BY VIRTUE  
OF THE FOLLOWING ORDERS:

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WAR DEPARTMENT,

ADJUTANT GENERAL'S OFFICE, }  
Washington, June 10, 1851. } 1

GENERAL ORDERS, No. 29.

A general court martial, to consist of thirteen members, will assemble in the city of Washington, D. C., at 11 o'clock, A. M., on Monday, 23d instant, or as soon thereafter as practicable, for the trial of Brevet Brigadier General George Talcott, Colonel of Ordnance.

DETAIL FOR THE COURT.

1. Brevet Major General D. E. Twiggs.
2. Brevet Major General J. E. Wool.
3. Brevet Major General P. F. Smith, Col. Mounted Riflemen . 2
4. Brevet Major General B. Riley, Colonel 1st Infantry.
5. Brevet Major General G. Gibson, Commissary General.
6. Brevet Brigadier General J. B. Walback, Col. 4th Artillery.
7. Brevet Brigadier General S. Churchill, Inspector General.
8. Brevet Brigadier General J. G. Totten, Colonel Corps of Engineers.
9. Brevet Brigadier General N. S. Clarke, Colonel 6th Infantry.
10. Brevet Brigadier General T. Childs, Major 1st Artillery.
11. Colonel J. J. Abert, Corps Topographical Engineers.
12. Colonel J. B. Crane, 1st Artillery.
13. Brevet Colonel J. Plympton, Lieut. Colonel 7th Infantry.
- Brevet Major J. F. Lee, Judge Advocate.

Should any of the officers named in the detail be prevented  
 3 from attending at the time and place specified, the court will, nevertheless, proceed to and continue the business before it, provided the number of members present be not less than the minimum prescribed by law.

By order of the President,

R. JONES, *Adjutant General.*

*Judge Advocate.*

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WASHINGTON, June 23d, 1851.

The court met pursuant to the foregoing orders. Present, all the members named in the order, except General Clarke, whereupon the court was closed, and a member stated that according to information he had received, General Clarke was detained yesterday by an accident in Philadelphia, and might, therefore, be expected to be present to-morrow; whereupon the court decided to adjourn to meet to-morrow at 9 o'clock. The court was then opened and the adjournment announced.

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9 o'clock, Tuesday, June 24th, 1851.

The court met pursuant to adjournment. Present, as yesterday, all the members except General Clarke.

5 The record of yesterday was read over, when the following note was presented by General Talcott:

*Mr. President and Gentlemen of Court:*

The accused respectfully requests that, if consistent with the convenience of the court, the trial may not be commenced until after the arrival of the eleven o'clock train to-day, in the hope that the absent member may then arrive and a full court be organized.

G. TALCOTT, *Bt. Brig. Gen'l,  
Colonel of Ordnance.*

6 Upon which application the court was closed and decided to take a recess till 12 o'clock this day in expectation of General Clarke's arrival, whereupon the court was opened and adjourned.

12 o'clock Tuesday, June 24th, 1851.

The court met again pursuant to adjournment. Present, all the members named in the order except General Clarke; General Talcott also present in court. The court then proceeded to organize. General Talcott, having heard read on yesterday the general order constituting the court, was now enquired of by the Judge Advocate if he had any objection to any member named therein, to which he replied in the negative. The court was then sworn in his presence by the Judge Advocate, according to due form of law, and the Judge Advocate was duly sworn by the presiding officer of the court, and General Talcott was then arraigned on the following charges and specifications to wit:

Charges and specifications to charges preferred against Brevet Brigadier General George Talcott, Colonel of the Ordnance Department, by order of the Secretary of War.

**CHARGE 1.—Violation of the 132d article of the regulations for the government of the Ordnance Department.**

Specification—In this, that he, the said Brevet Brigadier General George Talcott, Colonel of the Ordnance Department, in charge of the Ordnance Bureau of the War Department, did, without the sanction of the Secretary of War, at Washington, November 6th, 1850, write and transmit by the hands of Doctor Edward Carmichael to Brevet Colonel Benjamin Huger, a Captain in the Ordnance Department, commanding the Arsenal at Fort Monroe, the following letter of instructions, to wit:

ORDNANCE DEPARTMENT,  
Washington, 6th November, 1850. }

COLONEL B. HUGER, *Fort Monroe Arsenal*:

Sir,—It may be well to provide more shot and shells, from time to time, for the post of Fort Monroe, and for this purpose you are authorized to procure them to a reasonable extent if as I suppose, (the price of iron being now so low,) they can be had 10 on favorable terms. You will make the necessary estimates of funds to meet the deliveries as they occur. They should be procured by open purchase only.

I am, sir, your ob't servant,  
(Signed) G. TALCOTT,  
*Bt. Brig. Gen'l, Colonel of Ordnance.*

And on the receipt whereof the said Benjamin Huger, having on the 8th November, 1850, at Fort Monroe Arsenal, given to the said Doctor Carmichael an order in writing as follows:

FORT MONROE ARSENAL, }  
November 8th, 1850. }

DOCTOR EDWARD CARMICHAEL:

Sir,—You will please furnish the Ordnance Department with five hundred tons 32 pdr. solid shot, at such times within one year from this date, as shall be practicable, to be delivered on the Ordnance Wharf, at Fort Monroe, subject to inspection and free of all cost to the United States.

For the shot, when inspected, will be paid three cents, three and one-fourth mills per pound, (3 cents 3-4 mills) with the understanding that the department may, at any time within the year specified, order and receive from you shot and shells of any calibre, in any quantities not exceeding five hundred tons, at the above named price for shot, and at the rate of four cents and one-fourth of a mill per pound (4 cents 1 1-4 mill) for shells.

Respectfully, your ob't serv't,  
(Signed) BENJ. HUGER, *Bt. Colonel.*

Which order the said Carmichael did then and there accept, and upon the terms and conditions thereof did contract with said Huger for shot and shells; and the said Huger having thereafter,  
 13 that is to say, on the 21st November, 1850, at Washington, communicated to the said George Talcott, Colonel of the Ordnance Department, that he had, under the instructions contained in the aforesaid letter from said Talcott, dated the 6th November, 1850, given the said order to said Carmichael, and upon the terms and conditions thereof, concluded a contract with said Carmichael, he, the said Talcott, did allow and approve the said act of said Huger, thereby permitting and sanctioning a contract for supplies to be made and carried into effect without the sanction  
 14 of the Secretary of War, and in violation of the 132d article of the regulations for the government of the Ordnance Department.

**CHARGE 2d.—*Wilful disobedience of orders and instructions from the Secretary of War, in relation to a contract for supplies.***

Specification—In this, that he, the said Brevet Brigadier General George Talcott, Colonel of the Ordnance Department, in charge of the Ordnance Bureau of the War Department, having accompanied Doctor Edward Carmichael to the War Department, on the 1st November, 1850, and being then and there present in his  
 15 official capacity, when said Carmichael presented to the Secretary of War an application for a contract to furnish shot and shells to the Ordnance Department, and when said Secretary did then and there reject said application, and refuse to make a contract with said Carmichael, and did, moreover, refuse to recognize one which said Carmichael alleged to have been previously made with him, nevertheless, he, the said Talcott, did afterwards, that is to say, on the 6th November, 1850, at Washington, write and send by the hands of said Carmichael to Brevet Colonel Ben-  
 16jamin Huger, a Captain in the Ordnance Department, commanding the arsenal at Fort Monroe, the letter of instructions herein-before recited in the specification to the just charge, with the design and purpose to authorize and procure for said Carmichael a contract for shot and shells; and thereby to evade and disobey the aforesaid decision of the Secretary of War; by which means the said Carmichael did procure from said Huger the order and contract for shot and shells set forth in the said specification to the 1st charge. And the said Talcott being thereafter, to wit: at Washington, on the 21st of November, 1850, informed by said  
 17 Huger of said contract, and well knowing that the same was contrary to the decision of the Secretary of War, in regard to which decision he, the said Talcott, was duly informed and instructed by the said Secretary, nevertheless, he, the said Talcott, did allow and sanction said contract made by said Huger with said Carmichael; therein, and in these premises, violating his duty and disobeying the orders and instructions of the Secretary of War.

**CHARGE 3d.—*Conduct unbecoming an officer and a gentleman.***

Specification 1st—In this, that he, the said Brevet Brigadier General George Talcott, Colonel of the Ordnance Department, in charge of the Ordnance Bureau of the War Department, did by the means and contrivances set out in the specification to the 1st charge, and in the specification to the 2d charge, that is to say, by his letter of instructions to Brevet Colonel Huger of the 6th November, 1850, sent by the hands of Doctor Carmichael, and by his subsequent approval of the contract made by said Huger with said Carmichael, authorize and procure, and cause to be made, a contract for the purchase of a large amount of ordnance stores, to wit: shot and shells, which he, the said Talcott, knew, and had previously reported to the Secretary of War, were not needed for the public service; such conduct being an abuse of the authority of his office, a breach of the trust reposed in him, and unbecoming an officer and a gentleman.

Specification 2d—In this, that he, the said Brevet Brigadier General George Talcott, Colonel of the Ordnance Department, in charge of the Ordnance Bureau of the War Department, did, by the means and contrivances aforesaid, that is to say, by his aforesaid letter of the 6th November, 1850, to Brevet Colonel Huger, sent by the hands of Doctor Carmichael, and by his subsequent consent to the contract aforesaid, made by said Huger with said Carmichael, authorize and procure, and cause to be made, and did confirm a contract for a large amount of ordnance stores, to wit: shot and shells, with a person, that is to say, with said Carmichael, who, as he, the said Talcott, believed and knew was not in a capacity to execute the said contract, and did not intend to execute it otherwise than through a sale or assignment of the contract to some other person; thereby wilfully and knowingly exposing the government to loss, and the public service under his charge to the discredit arising from the sale of a public contract; in consequence whereof a contract was made, which was subsequently sold and transferred for a large sum, to wit: six thousand five hundred dollars, and by which contract the government was made liable to pay for certain shot and shells more by that amount that it would have paid for the same by a contract made directly with the manufacturer; such conduct being an abuse of his official authority, a breach of the trust reposed in him, and unbecoming an officer and a gentleman.

Specification 3d—In this, that the said Brevet Brigadier General George Talcott, Colonel of the Ordnance Department, in charge of the Ordnance Bureau of the War Department, well knowing of the aforesaid contract with Doctor Carmichael, and that said Carmichael had engaged J. R. Anderson (proprietor of the Tredegar Iron Works in Richmond) to execute the said contract, and well knowing his official duty not to conceal, but to make known such contract to the Secretary of War, did, nevertheless, wilfully and designedly conceal it, and all knowledge

thereof, from the Secretary of War, from the 21st November, 1850, to the 11th April, 1851, and more particularly in the following instances and occasions, that is to say: on the 18th January, 1851, when the Secretary of War did inquire of him at the War Department, and did then and there endeavor to ascertain from him whether the aforesaid Tredegar Works in Richmond had a contract for making shot or shells for the Ordnance Department: and again on the 22d January, 1851, in written report from the Ordnance Bureau made by his, the said Talcott's, order, to the Secretary of War, in answer to a call from the said Secretary for information of all existing contracts chargeable upon the appropriations for the armament of fortifications, and for ordnance, and ordnance stores and supplies: and again on the 27th January, 1851, in a written report of that date made to the Secretary of War on the same subject, and in reply to further inquiries from said Secretary, who was thereby again seeking to ascertain whether any such contracts were outstanding: and again in a personal interview with the Secretary of War at the War Department, on the 30th January, 1851, when questioned by said Secretary as to the meaning or intention of the aforesaid letter to Brevet Colonel Huger, dated 6th November, 1850, whereof a copy was enclosed in said report of the 27th January, 52 1851: and again on or about the 1st March, 1851, when the Secretary of War did again enquire of him in regard to this matter in a personal interview at the War Department, and did endeavor to ascertain from him whether any shot or shells were being made for the Ordnance Department at the Tredegar Iron Works: and again on the 10th April, at the War Department, when the Secretary of War read to him a letter from Thomas Green, dated 5th April, 1851, alleging that the Tredegar Iron Works were making shot and shells for the Ordnance Department under a 26 contract probably given to Doctor Carmichael, and when said Secretary did repeat his enquiries with regard to that matter; on which several times and occasions, he, the said Talcott, did wilfully and designedly withhold and conceal from the said Secretary of War all knowledge of the said contract with Carmichael; such concealment and suppression being with intent to deceive the said Secretary, being in breach of his, the said Talcott's, official duty, and of the trust reposed in him, and being conduct unbecoming an officer and a gentleman.

Specification 4th—In this, that he, the said Brevet Brigadier 27 General George Talcott, Colonel of the Ordnance Department, in charge of the Ordnance Bureau of the War Department, did, on the 18th January, 1851, at the War Department, state to the Secretary of War, wilfully and falsely, and with intent to deceive him, that neither the proprietors of the Tredegar Iron Works nor any other establishment had any contract to furnish shot or shells to the Ordnance Department; whereas, in truth and in fact, and as the said Talcott well knew, a large contract for shot

and shells, and then outstanding, had been given to Doctor Edward Carmichael, which he had, as the said Talcott further knew,<sup>28</sup> engaged Joseph R. Anderson, proprietor of the Tredegar Iron Works, to execute.

Specification 5th—In this, that he, the said Brevet Brigadier General George Talcott, Colonel of the Ordnance Department, in charge of the Ordnance Bureau of the War Department, did, at the time and place therein set out, write and transmit to the Secretary of War the following report, that is to say:

ORDNANCE DEPARTMENT, }  
Washington, Jan. 27th, 1851. } 29

HON. C. M. CONRAD, *Secretary of War:*

SIR,—In answer to the note from the War Department of this date I have to report; that no contract has been made for shot, by this Department, from the last appropriations; no shot have been furnished; there are no contracts for shot, made by this department unfulfilled; and none are now contemplated.

Supposing that the enquiry may have reference to a letter officially addressed to Bt. Col. Huger, on the 6th November, 1850. I deem it not improper to send you a copy of that letter; although not specifically called for by your note. Col. Huger's<sup>30</sup> estimate for the present quarter, the only one received from him since the above date, contains nothing for the purchase of shot.

Respectfully, your ob't servant,  
(Signed.) G. TALCOTT,  
*Bt. Brig. Gen'l, Col. of Ordnance.*

And, in this, further, that he the said Talcott, did a few days thereafter, to wit, on the 30th Jan, 1851, when questioned by the Secretary of War as to the meaning of the aforesaid letter to Brevet Col. Huger, dated 6th November, 1850, whereof a copy<sup>31</sup> was transmitted to the Secretary of War with the aforesaid report dated January 27th, 1851, did state to the said secretary, that the meaning and object of said letter to said Huger, was to enable the Commander of the Arsenal at Fort Monroe to purchase shot and shells in small quantities as they might be required from time to time for experiments and artillery practice. Which written report and explanatory oral statement were false in fact and intent, and were made with design to deceive the said Secretary of War: he, the said Talcott, well knowing that a large contract was outstanding, which had been given to Doctor Carmichael for shot and shells for the Ordnance Department, which contract had no view to any provision for experiments or artillery practice; well knowing that he had permitted, allowed, and approved the said contract; well knowing that his said letter of instructions to said Huger, dated 6th November, 1850, was not so designed, and had not been so construed by said Huger as now represented by him, the said Talcott, to the Secretary of War;<sup>32</sup>

and well knowing that Joseph R. Anderson, proprietor of the Tredegar Works had been engaged to execute the contract made with said Carmichael.

- 33 Specification 6th—"In this, that he, the said Brevet Brigadier General George Talcott, Colonel of the Ordnance Department in charge of the Ordnance Bureau of the War Department, being enquired of by the Secretary of War at the War Department, on or about the 1st March, 1851, in regard to information which had reached the said Secretary that the Tredegar Works were actually making shot and shells for the Ordnance Department, he, the said Talcott, did earnestly assure the said Secretary that there was not the slightest foundation for the said information. Which statement of said Talcott was false, and he knew it so to be;
- 34 well knowing the foundation of said report and the facts in the case; well knowing that the contract aforesaid had been made with Doctor Carmichael, that said Carmichael had employed Joseph R. Anderson, the proprietor of the Tredegar Works to execute it, and that the said Anderson claimed the right to execute it as the assignee or agent of said Carmichael.

Specification 7th—"In this, that he, the said Brevet Brigadier General George Talcott, Colonel of the Ordnance Department, in charge of the Ordnance Bureau of the War department, having heard read to him at the War Department on the 10th April, 35 1851, by the Secretary of War, a letter from Thomas Green, dated Washington, 5th April, 1851, alleging, among other things, that the Tredegar Iron Works were engaged in executing a large amount of work, for the delivery of shot and shells to the Ordnance Department, under a contract probably given by the Department, or its officers, to Doctor Edward Carmichael, and assigned by him to Mr. Anderson, proprietor of the said Tredegar Works, he, the said Talcott, did thereupon assert to said Secretary that 'there was not a word of truth in it,' meaning in said statement in said letter; that 'it was false from beginning to end,' 36 or words to that effect. Which declaration of said Talcott was positively and wilfully false, and intended to deceive the said Secretary of War.

By order of the Secretary of War,  
J. F. LEE,  
*Judge Advocate of the Army.*

To which charges and specifications, General Talcott pleaded "Not Guilty," and submitted the following in writing:

*Mr. President and Gentlemen of the Court:*

- 37 Desiring to interpose no obstacle to a full and fair enquiry into the facts upon which these charges and specifications have been constructed, I respectfully request that I may be allowed to reserve all matter touching their sufficiency in law, to be used in the discretion of counsel at the summing up of my defence; and

with this reservation I now plead, to all and singular the said charges and specifications, not guilty. 38

Appearing before you under circumstances for which I have not been prepared by any thing in the experience of my past life, I desire to entrust the defence of my honor and character upon this occasion to a professional friend here present; and to this end I request that J. M. Carlisle, Esq., a member of the bar of this city, may be allowed to attend me during the open sessions of the court under the restrictions ordinarily imposed upon counsel in Courts Martial. 24th June 1851.

(Signed) G. TALCOTT, *Bt. Brig'r Gen'l,*  
*Col. of Ordnance.* 39

Which plea was ordered to be entered on the record, and the application for counsel allowed; and thereupon General Talcott presented to the court the following note.

*Mr. President, and Gentlemen of the Court:*

Before proceeding to the trial it is proper that I should make known to you that the Hon. Wm. L. Marcy, a witness deemed material to my defence, and for whom a summons was duly and seasonably issued by the Judge Advocate at my request, is not in attendance, nor has he been heard from in acknowledgement of the subpoena, which was forwarded to him at Detroit. In the event of his not appearing before the examination of the other witnesses shall have been concluded, I may be under the necessity of applying for a short delay; which, however, I trust will not be the case. In the mean time, I respectfully give this notice to the court in order that I may suffer no detriment by reason of the commencement of the trial in the absence of the witness.

(Signed) G. TALCOTT, *Bt. Brig'r Gen'l,*  
*Col. of Ordnance.*

The Judge Advocate submitted the following note.

*Mr. President:*

As the facts on which these charges are based will involve a long narrative by the mouths of witnesses, I propose, in order to bring the case before you in what appears to me the clearest and most easily intelligible manner, to put the facts in evidence as nearly as may be, in the order of time to which they belong, and therefore, not to examine each witness, when placed on the stand, through the whole case, but only on such point of it, as it is then intended to bring to your attention.

The defence, with a like view to facilitate the investigation, will confine their cross examination to the matter of the direct examination; and the witness when required to testify to other matter will be recalled by the prosecution. In this way, both sides expect to save time, and to bring out the case more clearly; and I state it now, that if it meets the approval of the court, such examinations as the court themselves desire to make of the witnesses, may be directed according to the same view.

(Signed) J. F. LEE, *Judge Advocate.*

Whereupon General Talcott presented the following:

43 *Mr. President:*

The accused begs leave to say to the court that so far as the suggestion of the Judge Advocate may affect him, he cheerfully accedes to it, believing that it will facilitate the investigation, which he sincerely desires may be thorough; and so conducted as to give the court the clearest understanding of the order of the facts, and of their bearing upon the respective specifications.

(Signed)

G. TALCOTT, *Bt. Brig'r Gen'l,*

*Col. of Ordnance.*

44 Capt. *William Maynadier*, a witness for the prosecution, being sworn in due form of law, testified as follows:

*Direct examination*, by Judge Advocate--

Q. On what duty are you now, and since what time? A. I am the principal assistant to the Chief of the Ordnance Department, and have been on that duty from the 1st of February 1842, to the present time, continuously.

Q. Has Gen. Talcott been in charge of the Bureau during all that period? A. From the time first stated, till within a few days past.

45 Q. Will you state to the court what are the usual amounts and general objects of the appropriations for the armament of fortifications, and for ordnance and ordnance stores and supplies? A. The usual amount of each of the appropriations named is \$100,000 annually. The general object of the appropriation for the armament of fortifications is to arm the fortifications of the country; and the money appropriated is applicable to the purchase of sea-coast and garrison cannon, and suitable projectiles for such cannon; of timber, iron, and other materials used in constructing sea-coast and garrison carriages, implements and equipments; also to the payment of all expenses attending the fabrication and repairs of such articles.

46 The general object of the appropriation for ordnance and ordnance stores and supplies, is to provide field and siege artillery, side-arms and accoutrements for troops in the United States service. The money appropriated is applicable to the purchase of field and siege cannon, and suitable projectiles, of swords and sabres; and of iron timber, leather and other materials used in making field and siege carriages, and implements, accoutrements, ammunition and harness, and all expenses attending the fabrication and repairs of these articles at the arsenals.

47 Q. Were you in charge of the Ordnance Bureau in May 1850? A. During the temporary absence of Gen. Talcott, I was.

Q. Did Dr. Carmichael apply to you for any contract at that time; if yea, tell what decision was had thereon? A. Doctor Carmichael submitted to me certain papers from ex-President Tyler and ex-Secretary Wilkins, by virtue of which he claimed to be entitled to a contract for shot and shells. I referred him to

the Secretary of War, Mr. Crawford, by whom the papers were sent to me for a report. I made a report. 48

Q. Is this an office copy of that report? A. It is.

The report here read as follows:

ORDNANCE DEPARTMENT, }  
Washington May 21st, 1850. }

Hon. G. W. CRAWFORD, *Secretary of War*:

Sir—I have to acknowledge the reference to this office (for report) of certain papers relating to a claim of Dr. E. W. Carmichael to receive from Government a contract to supply shot and shells. As this claim rests on a verbal promise from the Secretary of War, during the administration of Mr. Tyler, there is of 49 course nothing on the records of this department to throw any light on it, and nothing but the papers presented by Dr. Carmichael, from which any information on the subject can be derived. From these papers it appears that Messrs. Wellford and Carmichael having completed "limited contracts" for castings, applied for a further contract to supply one thousand tons of shot and shells; that the Secretary of War, whose attention was invited to the matter by the President, expressed his intention of granting the contract as suggested, when the passage of the appropriation bill might make it legal for him to do so; that thereupon 50 Mr. Tyler stated to Messrs. Wellford and Carmichael "that they might feel themselves entirely secure in the business, and proceed to make the necessary preparations," which they did accordingly, and that the appropriation bill passed too late to permit the contract to be made during Mr. Tyler's administration. "The limited contracts" executed for the War Department by Messrs. Wellford and Carmichael during Mr. Tyler's administration (exclusive of that for the navy, mentioned in Mr. Wilkins's letter) amounted to about 294 tons of shot and shells, for which they received \$29,918·94. Under the succeeding administration these gentlemen obtained 51 and executed contracts for shot and shells to the amount of more than 500 tons, for which they received \$48,948·83; making together 794 tons at \$78,867·77.

The government is not now in want of such supplies, and could not contract for them at this time, if it were; because there is no law or appropriation on which to base such contracts, as required by the 6th section of the act approved 1st May 1820.

The papers in the case are herewith returned.

I have the honor to be

Sir, your ob't serv't.

WM. MAYNADIER, *Capt. of Ordnance,*  
*in charge of Ordnance Department.*

52

*Direct examination of the witness continued.*

Q. The words "limited contracts," used in this report, appear quoted—will you explain why, and the sense in which you designed to use the word "limited"? A. I quoted it from ex-Pre-

sident Tyler's letter, and used limited in rather an ironical sense; 53 thinking the contracts had been rather ample than limited.

*Q.* Will the witness read the law of the 1st May 1820, to which in his report he refers the Secretary of War? *A.* The law read as follows, at 207th page of Cross, and in 6th section of that act:

Sec. 6. And be it further enacted, that no contract shall hereafter be made by the Secretary of State, or of the Treasury, or of the Department of War, or of the Navy, except under a law authorizing the same, or under an appropriation adequate to its fulfillment; and excepting, also, contracts for the subsistence and clothing of the Army or Navy, and contracts by the Quartermaster's Department, which may be made by the Secretaries of those Departments. 54

*Direct examination*, continued.

*Q.* Is this paper here exhibited to witness the decision of the Secretary of War, Mr. Crawford, as transmitted from the War Department to the Ordnance Bureau, for file? *A.* It is.

The following paper was exhibited to witness, with the question last preceding:

WAR DEPARTMENT, }  
Washington, May 23d, 1850. }

55 SIR,—From the examination given to the papers which you handed to me, a few days since, it appears that during the year 1844 yourself and partner entered into a contract with the Government to furnish shot and shells to the amount of about \$30,000. The satisfactory manner in which you executed this contract induced the then President, and Secretary of War, to promise another of larger amount, but the restriction of the Act of Congress, May 1st, 1820, interposed an obstacle, so long as an appropriation, applicable to the object, was withheld or postponed by Congress. This appropriation was passed, but so late that no time was permitted to put it in valid form, the promise to which I have adverted.

These gentlemen, lately connected with the Government, exerted their influence to obtain, in part or whole, a recognition of their verbal promises made to you, by recommending, in 1845, yourself and partner to the favorable consideration of the Department, and giving a statement of what had occurred in relation to the contract intended to be entered into between yourselves and the Government. The late Secretary of War immediately thereafter contracted with you to deliver 500 tons of shot and shell equal in value to about \$79,000. On this statement of the facts, 57 I infer from the letter of a legal adviser, which accompanies your papers, that you desire to be indemnified against loss sustained, in consequence of the non-fulfillment of the verbal promises before mentioned. As a question of damages, the Department can not decide it, without additional legislation.

If, however, the past transaction be considered as constituting a claim on the Government to make a contract, by which the

informal agreement of our predecessors may be carried into effect, I have then to refer you to the enclosed report from the Ordnance Bureau, and to say whenever the means are granted, the ordinary and legal mode of making contracts will be pursued.

I am, very respectfully, your ob't servant,

GEO. W. CRAWFORD,

DR. E. H. CARMICHAEL.

*Secretary of War.*

*Direct examination*, resumed.

Q. When did Dr. Carmichael next again apply for a contract, if you know? A. I don't know that he came again and applied for a contract. There is no record of such subsequent application in our office. I was absent from the office from the 16th of 59 October to the 11th of November, and when I returned he was not here.

The defence had no cross-examination to make at this time, and the witness retired.

*Charles M. Conrad*, Secretary of War, a witness for the prosecutor, being sworn in due form of law, testified as follows:

*Direct examination*, by Judge Advocate—

Q. Did Dr. Carmichael apply to you, as Secretary of War, for a contract in the fall of 1850? if yea, will you state to the Court what passed on that subject. A. Some time about the latter end of October, or early in November last, General Talcott came 60 into my office at the War Department, shortly after I reached it in the morning, accompanied by a gentleman whom he introduced to me as Dr. Carmichael, of Virginia. After the gentleman was seated, General Talcott told me that Dr. Carmichael wished to speak to me on some business which he had with the Department, and which he, Dr. Carmichael, would explain. Dr. Carmichael then observed that he came to see me in relation to a contract for making shot. He said that he had made a contract for a considerable quantity of shot with some previous head of the Department. I do not recollect what individual he spoke of as 61 the head of the Department, or whether he mentioned his name. But that the officer had left office before the contract was executed, and therefore the contract had never been fulfilled—that he had applied, however, to Mr. Crawford, my immediate predecessor, to carry out the contract, and that Mr. Crawford had recognized it; but had also left office before the contract was executed; and he called upon me now to allow him to execute the contract.

I asked him if he had the contract, or if it was in writing, I forgot which. He stated that it was not in writing, but that it was fully understood, and that Mr. Crawford was satisfied of the existence of the contract, and recognized its validity. I asked if he had any evidence of that recognition. He said the papers in the case would show it. General Talcott, who was present during this conversation, had a bundle of papers in his hand. I asked, addressing myself to him—"General are those the papers?" He said they were. He was seated near me, and I requested him to hand them to me, which he did. I examined the papers to

look simply for the recognition of Mr. Crawford. I found this  
 63 paper, (the letter of Mr. Crawford, addressed to Dr. Carmichael, entered at page of the record here shown to witness) which I read over attentively, and after doing so I observed to Dr. Carmichael, that, according to that paper, it seemed to me that Mr. Crawford, so far from acknowledging or recognizing the existence of any contract on the part of the Government, expressly and positively negatived its existence. The Dr. said he thought differently; and I then read to him the last clause of Mr. Crawford's letter in which he refers him to the report of the Ordnance Bureau, and says to him that when the means are granted, the  
 64 ordinary and legal mode of making contracts would be pursued. This clause, I said to Dr. Carmichael, appeared to me utterly inconsistent with the *recognition* of a contract, and on the contrary to say that when a contract should be given, it would be according to the legal mode, which I said, I understood to be by inviting proposals. The Dr. still contended for some time that his view of the letter was correct, and also stated that there was a verbal understanding between himself and Mr. Crawford, by which he was to make the shot.

In answer to that, I told him that I had adopted as a rule ever  
 65 since I had been in the Department, having been frequently called upon to recognize verbal promises or agreements, made by or with my predecessors, to recognize nothing as binding that did not appear on the records of the Departments, or in writing. The Dr. made a very earnest appeal to me to be allowed to make some shot; and presented a good many, (of what he seemed to regard as arguments or considerations likely to influence me) to induce me to allow him to make some shot. But I persisted in my refusal in very positive terms; and he left the office somewhat dissatisfied at my decision.

96 Q. Did you state any other reason than those mentioned, any reason having reference to the state of the public supplies, why you would not give a contract for shot? A. My impression is, and it is very strong, that I stated to him that the department was not at that time in want of shot, or was not making shot, on that point however I will not be positive.

Q. Did General Talcott make any remark, or offer any suggestion to the Secretary of War, at any time, during this conversation, either in regard to the facts stated by Dr. Carmichael, or to the wants of the public service, if so be pleased to state them.

67 A. My recollection is, Sir, that during the conversation Gen. Talcott remained silent; indeed I was somewhat surprised after I discovered that there was no recognition of the contract by Mr. Crawford, that Gen. Talcott had allowed the statement of Dr. Carmichael on that point to pass uncontradicted. I thought of it after he left the room as a singular circumstance, and but for the accidental circumstance of my calling for the papers and

examining them there, I should have taken the fact as certain, being as I am in the habit of receiving as evidence of fact every report and statement made to me by the head of a bureau, I was the more surprised from the fact, that a day or two after Gen. Talcott came into the office, on other business, and introduced the subject of the conversation with Dr. Carmichael, and observed to me, in speaking of that conversation, " You were right, there never was any recognition of the contract," and spoke as I thought somewhat sneeringly of Dr. Carmichael's declarations that there had been such recognition.

Q. Can you fix more nearly than you have stated the date of this conversation? A. No I only fix it by the time of my return 69 from New York. I returned on the 23rd and resumed the business of the office on the 24th. I know that the conversation occurred a short time, a few days, after my return.

The Judge Advocate stated that he rested the direct examination of this witness here for the present.

*Cross examination, by defence—*

Q. Did Gen. Talcott perform any other office, or take any other part in the interview between yourself and Dr. Carmichael than that of introducing that person to you, and stating that he, Carmichael, desired to see you upon some business, as to which 70 he could speak for himself? A. Nothing—I have stated what occurred.

Q. Are you clear in your recollection that Gen. Talcott had the bundle of papers in his hand when you called for them; or did he merely pass them to you from Carmichael? A. He had them in his possession.

Q. Did you remark whether he brought them in with him, or whether Dr. Carmichael handed them to him during the interview, and if so, at what period of the interview? A. My impression is, that he brought them in, I do not recollect seeing 71 Charmichael give them.

Q. Was there any thing said by Carmichael as to the time or place when a verbal recognition of the contract had been made, and did he say Gen. Talcott was present, or had any knowledge of it? A. I do not recollect that any thing of the kind was said as to the time or place, or as to Gen. Talcott's having knowledge of it.

Q. Was there any cause for surprise then, that Gen. Talcott did not contradict the statement that a verbal recognition had been given by the Secretary, of which he could have no knowledge? A. My remark about my surprise applied more particularly to the assertion that it had been recognized in writing, but I also attach some importance to the declaration made in Gen. Talcott's presence that it had been verbally recognized. The matter relating to an affair of his bureau, and the declaration made positively in his presence, I might have presumed it to

be correct, and acted on that presumption, as I have stated, I am  
73 in the habit of receiving the declarations or admissions of the  
heads of bureaus with implicit confidence.

Q. As to the alleged written recognition, was it not one of  
the papers which you say were handed to you by Gen. Talcott,  
and was there any commentary from him necessary to make it  
intelligible to you? A. I have already stated that my looking  
at the papers at all was entirely accidental; if Gen. Talcott had  
himself stated that such a contract existed, I should have taken  
the fact for granted, as I am in the daily habit of doing in refer-  
ence to contracts made by all the heads of bureaux, and when  
74 Dr. Carmichael made the assertion in his presence, and he re-  
mained silent, I considered it at the time as equivalent to making  
the declaration himself, or nearly so, and I took the papers with  
an entire conviction that I should find in them a recognition of  
the contract by Mr. Crawford, and was a good deal surprised  
when I found it was not so.

And here at the hour of three the court adjourned, to meet to-  
morrow at nine o'clock.

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75 9 o'clock, Wednesday, June 25th, 1851.  
The court met pursuant to adjournment. Present all the  
members as yesterday organized, the Judge Advocate and Gen.  
Talcott.

Charles M. Conrad, Secretary of War, a witness of the prose-  
cution in continuation.

*Cross examination*, resumed:

Q. You stated in your direct examination yesterday, that when  
you asked Mr. Carmichael if he had any evidence of the recogni-  
tion of his contract, he answered that *the papers* in the case would  
76 shew it, and that you thereupon asked General Talcott if the  
papers he held in his hand were the papers in the case, to which  
he answered that they were, and handed them to you upon your  
request; have you now any knowledge that the said papers which  
according to your recollection were handed to you by General  
Talcott, were other or less than the true papers, and all the pa-  
pers, necessary to the decision of the question whether such re-  
cognition had in fact and law been made? A. I have no such  
knowledge.

Q. You have stated that the said "bundle of papers" contained  
77 the decision of Mr. Secretary Crawford upon the validity of the  
said alleged contract; *are you able to state what other papers it  
contained?* A. I do not think that I examined any one paper in  
the package, except the letter of Mr. Crawford referred to in my  
testimony of yesterday; I took up *that* because I saw the name  
of Mr. Crawford appended to it; I asked Dr. Carmichael if that  
was the recognition that he spoke of, and he said it was; he  
never alluded to any other paper than the one in question.

Q. When Mr. Carmichael answered your inquiry as to the evidence of recognition of his contract, by saying that the papers 78 in the case would show it, what led you to ask Gen. Talcott immediately "are those the papers?" A. I presume I was led to ask that question, because the idea occurred to me that if those were the papers I would look at the recognition spoken of.

Q. What I desire to understand is, whether the fact that the package of papers was there held openly before you, did not naturally lead you to infer that they were the papers in the case?

A. It did.

Q. If General Talcott brought with him and held conspicuously in his hand before you, the papers touching Carmichael's claim, 79 and amongst them a clear written decision against it by Mr. Crawford, could you suppose that he meant knowingly to endorse an untruth, the means of exposing which, he himself at the same time, as you say, held openly under your eye, in such manner as to lead you to understand that it was the paper referred to? A. I did not say that he held the papers conspicuously before me so as to invite my attention to them, or that he opened any papers to me; he held the package of papers in his hand, and I asked him if those were the papers; with this explanation of the facts, I proceed to answer the question, and say that upon the supposition 80 that I would examine the papers, such a design is not supposable; but upon the supposition that I might not examine the papers, such a design is perfectly consistent with the fact of having the papers in his hand.

Q. Can you suggest a reason why General Talcott should have brought those papers before you, (if he did,) while he meant to give countenance to an assertion plainly refuted by them? A. I could only give suspicions; I do not know that I can with propriety give them, unless the court or the gentlemen desire to hear them; I know no facts; I do not mean that I had no suspicions 81 then; the suspicions I now refer to arose subsequently; I mean that I then thought the part taken by General Talcott strange and singular, but my view of it then did not cause what may be called suspicions; it struck me as singular, and the more I reflected upon it, the more it struck me in that light; it made an impression on my memory; it struck me as strange at the time, and more so in consequence of what General Talcott afterwards said on that subject.

Q. Did Dr. Carmichael make any other application to you at the interview in question, than that which you have specified, 82 viz: to redeem the pledge which he alleged the former government had made him? A. Dr. Carmichael urged upon me to allow him to make a quantity of shot, partly on the ground of a positive contract, and partly on account of equitable considerations which he mentioned, such as his having made arrangements to comply with what he claimed to be a contract, and he urged me by many arguments and persuasions, as other people do when

soliciting contracts; among other things he said he was going to 83 reside in my city, New Orleans; I was inflexible, however, and perhaps shewed some little impatience, as I thought he had endeavored to practice a deception upon me, and finally he gave up in despair.

Q. Be pleased to state at what time you left this city in the fall of 1850? A. I think I was gone about a fortnight or 20 days; I do not recollect the precise time; I returned on the 23d, as the records of the department show that I resumed official business on the 24th.

Cross examination here ended.

84 *Question by the court—*

Q. Was there anything in the circumstances inconsistent with the supposition that General Talcott, after Dr. Carmichael had finished his argument, would, at that interview, have given the opinion he afterwards expressed, viz: that there was no pledge in Mr. Crawford's letter, provided you, in the mean time, had not come to the same opinion by the perusal of Mr. Crawford's letter? A. The reason why my surprise at General Talcott's silence, when Dr. Carmichael asserted that there was a written recognition of the contract by Mr. Crawford, was increased by 85 his remarking at a subsequent interview, "that I was right in deciding that there was no recognition," was this: I had supposed it possible that General Talcott agreed with Dr. Carmichael in supposing that Mr. Crawford's letter amounted to a recognition of the contract; but when he afterwards said that he agreed with me that there was no such recognition, my surprise at his silence increased because I did not know how to account for it.

Captain William Maynadier, witness for the prosecution, recalled.

*Question by Judge Advocate—*

86 Q. In making your report to Mr. Secretary Crawford, dated 21st May, 1850, against Carmichael's claim, were you acquainted with General Talcott's opinion on this subject? A. I don't recollect ever to have heard General Talcott express an opinion on that subject prior to the date of that report, but I think that on his return in last year, in June, 1850, I brought that report to his attention as showing what I had done in Carmichael's case, I am not positive, but it is my impression, and that he approved what I had done; I am sure that he read my report in March of this year, and expressed to me his approbation.

87 *Cross examination—*

Q. Has not that report stood from that day to this as the official report of the Ordnance Department, upon Dr. Carmichael's claim? A. It has so stood.

*Re-examined—*

Q. Do you know that any other subsequent occasion arose for any report or other official action of the bureau in that matter,

before Dr. Carmichael brought up the case to Mr. Conrad last fall?

*A.* I do not.

88

The Judge Advocate submitted the following note:

I now propose that the defence admit that Dr. Carmichael, as shown by the books at Willard's Hotel, was in this city on the 30th and 31st of October, 1850, and that he is there entered as having gone on the 31st of October to other lodgings.

Whereupon General Talcott offered the following note:

"The accused supposing the Judge Advocate's information to be correct, admits the facts to be as stated."

89

Brevet Colonel Benjamin Huger, a Captain in the Ordnance Department, a witness on the part of the prosecution, being sworn in due form of law, testified as follows:

*Direct examination*, by Judge Advocate.

*Q.* Will you relate to the Court the facts and circumstances attending your giving Dr. Carmichael, in November last, an order to furnish supplies to the Ordnance Department? *A.* Very early in November last, Dr. Carmichael came to Fort Monroe, I understood from Washington, and stated to me—

Here the defence interposed the following objections:

90

The accused objects to any testimony being given as to declarations or statements by Dr. Carmichael of the purport or scope of which statements or declarations, he, the accused, not being present, can have no knowledge; and which are clearly incompetent to affect him in any manner.

G. TALCOTT,  
*Bt. Brig. Gen'l, Colonel Ordnance.*

The Judge Advocate enquired of the witness whether what Dr. Carmichael then stated to him, was by him, witness, ever made known to General Talcott. Witness could not distinctly remember, thought he had made it known to him.

91

The Judge Advocate waived for the present demanding of witness to state what Carmichael said.

Witness resumed—On his application I furnished him a list of such shot as I thought it advantageous to the service should be procured at Fort Monroe. On the 8th day of November Dr. Carmichael returned to Fort Monroe, bringing me this letter from General Talcott, written and signed by his hand:

ORDNANCE DEPARTMENT, }  
Washington, 6th November, 1850. } 92

*Col. B. HUGER, Commanding Fort Monroe Arsenal:*

Sir.—It may be well to provide more shot and shells, from time to time, for the post of Fort Monroe, and for this purpose you are authorized to procure them to a reasonable extent if, as I suppose (the price of iron being now so low,) they can be had on favorable terms. You will make the necessary estimates of

funds to meet the deliveries as they occur. They should be procured by open purchase only.

I am, sir, respectfully,

Your obedient servant,  
G. TALCOTT,  
*Bt. Brig. General, Col. of Ordnance.*

- 93 Witness continued—On receipt of this letter from General Talcott, I gave Dr. Carmichael an order as follows:

FORT MONROE ARSENAL, }  
November 8th, 1850. }

DR. EDWARD CARMICHAEL:

Sir,—You will please furnish the Ordnance Department with five hundred tons 32 pdr. solid shot, at such times, within one year from this date, as shall be practicable, to be delivered on 94 the Ordnance Wharf, at Fort Monroe, subject to inspection, and free of all cost to the United States.

For the shot, when inspected, will be paid three cents three and one-fourth mills per pound, (3 cents  $\frac{3}{4}$ ths.) with the understanding that the department may, at any time within the year specified, order and receive from you, shot and shells of any calibre, in any quantities not exceeding five hundred tons, at the above named price for shot, and at the rate of four cents and one-fourth of a mill per pound (4 cents  $\frac{1}{4}$  mill) for shells.

Respectfully, your ob't serv't,

95 (Signed) B. HUGER, *Brevet Colonel.*

Witness resumed—One reason why I was induced to give him this order was, that I had formerly got shells from a foundry near Fredericksburg, in which he had an interest, on similar terms in regard to inspections at the fort, and he told me that they were to be made at that foundry. Dr. Carmichael brought me a memorandum in the handwriting of Mr. Adler, a clerk in the Ordnance Department, whose handwriting I knew, showing the 96 lowest prices paid for shot by the Bureau. It was a mere memorandum. I do not know what became of it; I think it purported to state the lowest prices paid for shot and shells generally without regard to calibres. That price I offered Dr. Carmichael. He proposed to add the cost of freight from Fredericksburg to Fort Monroe; we calculated it and added it in. By the next mail I received a letter from Mr. Adler, stating that, on further examination of the books, he found some shot had been purchased at a less rate, which letter came after Dr. Carmichael had left. I 97 came to Washington about the middle of November. A few days after my arrival here, General Talcott referred to me a letter from Goeuvernur Kemble to him, dated November 17th, which is here presented to the court. I am not certain how or when I received this letter; I think it was sent to me; I think Brevet

Major Talcott, of the Ordnance Department, brought it to me. I was told it was referred to me to be answered, as I gave the order.

The letter here read as follows:

(*Private.*)

98

COLD SPRING, 17th November, 1850.

*Dear General,*—Dr. Carmichael, of Richmond, has written to me enclosing a copy of a letter from Colonel Huger ordering five hundred tons of 32 pdr. shot deliverable at Old Point Comfort, offering the order to me for our execution and delivery according to the terms therein specified. Of course the Doctor is to take the lion's share of profits, but it would enable me to keep our moulders together during the winter, when the work of the department generally falls off, and therefore, if an arrangement by which the order should be transferred to me would meet the approbation of the department, I should try to make one with him. I shall write to him to this effect, more particularly because there appears to be some irregularity in the transaction that I do not understand; and I would ask the favor of you to inform me as early as possible whether there would be any objection on your part, and if not, how I had best arrange with him, whether through a special power of attorney from him, or by transfer of the order in any other manner.

99

Very sincerely, yours,

GOUV. KEMBLE.

100

Please direct to the care of }

Wm. Kemble, New-York, }

GEN'L TALCOTT, *Ordnance Dep't, Washington.*

Witness resumed—I answered the letter of Mr. Kemble. Here is a copy of my answer.

The answer was shown to General Talcott before it was sent, and that was the first occasion of consultation between us on that subject.

101

The copy produced by witness here read to the court as follows, by consent:

WASHINGTON, November 21st, 1850.

To GOUVR. KEMBLE, Esq'r:

My dear sir,—General Talcott has referred your letter of the 17th instant to me. Neither General T. or myself consider the order to Dr. Carmichael, for a supply of shot, assignable in the manner he proposes. Dr. Carmichael was interested in a foundry near Fredericksburg, Va., and supplies of shot and 102 shells for Fort Monroe have heretofore been procured there. In giving him the order, a copy of which he sent you, it was understood that the work was to be done at that foundry, which could only turn them out in limited quantities as required, and as I had

means to pay for them. I was authorized by General Talcott to estimate for funds to pay for them, from time to time, as I required them, and my stating the whole amount that would be required was for the purpose of letting the founder (Mr. Wellford, who Dr. C. told me would have charge of the work,) make his arrangements for materials, &c., not that I expected him to deliver the whole amount immediately. Under these circumstances I am not authorized to consent to the transfer of the order to Dr. C. in the manner he proposes.

I am, very truly, yours,  
 (Signed) BENJ. HUGER.  
 (True copy) BENJ. HUGER.

104 Witness resumed—The General agreed with me that it was a proper answer. I considered him as approving my objection therein to the transfer. The General did remark to me that the Secretary of War would be incensed, and justly so, if an order for supplies should be hawked about in market. He also did express surprise at the amount of the order; but I did not understand him as reproofing me for giving an order in compliance with his instructions. A few days after I received a letter from Brevet Captain Stone, who was in temporary command of the Arsenal at Fort Monroe during my absence, of the contents of which I informed General Talcott. An extract from Captain Stone's letter of 22d November, 1850, here read, with a letter enclosed therein, which Captain Stone had received from Mr. Anderson, dated November 20th. These papers read as follows:

FORT MONROE, November 22d, 1850.

*My dear Colonel:*

106 I enclose you a treasury draft with the necessary papers to sign. This morning brought me a letter from Mr. Anderson, enclosing a power of attorney from Dr. Carmichael, for making the shot ordered at Wellford's foundry. Is not that a beautiful operation for the Doctor? He said most expressly that he wanted the contract for the sole purpose of starting the foundry; and now he has turned the whole order over to the Tredegar Works. Shall I put the power of attorney on file and send up the guages as Anderson requests, &c. &c. &c.

Yours very truly, STONE.

TREDEGAR IRON WORKS, }  
 November 20th, 1850. }

107 COLONEL B. HUGER, U. S. Army, Old Pt.-

Dear Sir,—I enclose a power of attorney from Dr. E. H. Carmichael to attend to his order for shot. Be good enough to place it on file and to send me the necessary 32 pdr. guages.

I am, with much respect, your ob't servant,  
 J. R. ANDERSON.

The witness resumed—On the receipt of these papers I wrote to Captain Stone, on consultation with General Talcott, stating my objections to Dr. Carmichael's transferring the order, in consequence of which I ascertained, after my return to Fort Monroe, Captain Stone wrote to Mr. Anderson a letter of which I present a copy from the books of the arsenal.

The letter of Captain Stone of November 26th here read as follows, by consent, from the copy:

FORT MONROE ARSENAL, }  
November 26th, 1850. }

J. R. ANDERSON, Esq., *Tredegar Iron Works*:

Sir,—I am instructed by Colonel Huger, now in Washington, to return to you the power of attorney issued to you by Dr. E. Carmichael, and to say that he (Colonel H.) thinks Dr. Carmichael had, *under the circumstances*, no right to transfer his order for shot without first consulting him and obtaining his consent.

Very respectfully, &c.,

(Signed)

C. P. STONE, *Bt. Captain.*

True copy.

Witness resumed—I had no further consultations with Gen. Talcott on that matter before I returned to Fort Monroe. On my return, I wrote myself to Mr Anderson.

The accused here objected, that what subsequently passed between Anderson and the witness was not admissible in evidence, unless it had been brought to the knowledge of the accused.

The Judge Advocate stated he proposed to prove the execution of the contract and the delivery of shot under it. The witness has proved, without objection, what Capt. Stone wrote to Anderson in regard to the contract, under the witness's instructions. It is proposed to prove what witness wrote to Anderson in that matter. The accused submitted the following objections in writing:

The accused begs leave to state to the court, that so far as what passed between Col. Huger and Mr. Anderson, or other persons, was brought to the knowledge of the accused, and approved by him, it is admitted to be competent evidence, but no further. What Mr. Anderson wrote to Col. Huger, and what Col Huger replied, is as the accused is advised incompetent to be given in evidence, unless it were in pursuance of previous instructions from the accused, or was subsequently ratified and adopted by him.

The charges to which this testimony is supposed to apply, are the first and second.

The essence of these charges is that the accused made or procured, or authorized to be made, or ratified and allowed when made, a certain contract in violation of the 132d Art. of Ordnance Regulation, and in violation of orders and instructions for the Secretary of War relating thereto. The evidence thus far has

shown an official letter dated 6th Nov. 1850, from the accused to Col. Huger, authorizing him to make purchases from time to time to a reasonable extent; that Col. Huger acting upon his own 113 construction of that letter, gave an order to Dr. Carmichael; that Carmichael virtually transferred it to Anderson; that Col. Huger and the accused repudiated that transfer. How can the fact that shot were delivered, or that they were accepted by Col. Huger, affect the question whether the *accused* made, authorized or ratified a contract in violation of the regulation and orders.

The question is not what was done, but what was done by the order, procurement or consent of the accused.

(Signed) G. TALCOTT, *Bt. Brig'r Gen'l,*  
*Col. of Ordnance.*

114 The Judge Advocate said, "I propose to prove the execution of the contract under authority received from accused. Gen. Talcott is charged in one of the specifications with permitting a contract to be made and carried into effect. The authority to witness to make the contract is in proof, the knowledge thereof by accused afterwards, and the whole matter referred to witness and entrusted to him, with approval of his objections to a transfer of the contract.

Under this authority from accused to witness, it is now proposed to show that the contract was carried into effect, not repudiated, in part executed, shot delivered, received, inspected, all that passed between Anderson and witness in regard to the recognition or repudiation of the contract, passed in writing, and the writings are the proofs.

The court closed and came to the following decision.

The court without laying down general rules for the admission of testimony will hear any objection to particular questions or answers.

115 The court is further of opinion that it is competent for the prosecution to introduce testimony showing the carrying into effect or execution of the order or contract.

The court was then opened and the decision announced.

The direct examination of the witness resumed:

Q. State all that occurred in regard to the execution of the contract? A. I do not consider that the contract was executed on my part. I declined it in the answer written by Capt. Stone; I mean his letter of the 26th November.

Q. You say Capt. Stone wrote by your instructions declining it. Did you write yourself? A. I did write to Mr. Anderson on that subject, but never revoked the official order sent by Capt.

116 Stone of 26th November.

Q. Is not this letter here shown you a letter from you to Mr. Anderson, written on the 6th December, soon after your return to the fort, on the subject of that contract?

A letter from witness to Anderson, dated the 6th December, 1850, here shown witness.

The accused presented the following objection:

The accused now respectfully renews the objection last made by him, and applied it specifically to the correspondence between <sup>118</sup> the witness and Anderson now offered in evidence. If, under any circumstances, it could be received against him, it is clearly not admissible since the witness has stated that he never revoked the official letter written by his order, and with the approval of the accused.

If the object of the Judge Advocate is to contradict the statement of the witness adduced by him, it is equally inadmissible.

(Signed) G. TALCOTT,  
*Bt. Brig. General, Col. of Ordnance.*

The Judge Advocate said, the prosecution is not concluded by <sup>119</sup> the statement made by their own witness, but may bring evidence to prove any material fact in the case to be otherwise their own witness believes and states it to be. With the highest respect for this witness, the prosecution may show that he is mistaken. When the witness says that he never consented to execute the contract on his part; that he never revoked his official letter, written on his part, by Captain Stone, on the 26th November, the prosecution may show, if they can, that the witness is in error on both points; that the letter was revoked; that the contract was executed by his consent, and as what passed on this subject passed in writing, the Judge Advocate offers the letters as proof to that <sup>120</sup> end. The letters are the best evidence of their own contents; but the Judge Advocate has not objected to the witness stating his own opinions of their meaning and effect.

And the court, being closed, decided to admit the letter in evidence to the point stated.

The court was then opened and the decision announced, and the letter was then read as follows:

FORT MONROE, Dec. 6th, 1850.

J. R. ANDERSON, Esq'r, Richmond:

<sup>121</sup>

My Dear Sir,—I have your letter of the 2d instant. Dr. Carmichael called on me with a letter from General Talcott authorizing me to order of him a supply of shot and shells as I might require. Dr. C. it seems had some claim for an unfinished order on Wellford's foundry, and so far from telling either Gen. Talcott or myself that he had no interest in a foundry, but intended to sell the order in market, he *expressly stated* that he desired to get such an order to re-establish the foundry near Fredericksburg, in which he was formerly engaged, and which he said was to be managed by the son of Mr. Wellford, the former proprietor. <sup>122</sup>

Knowing that he could only do the work *there* very slowly, I gave him the whole amount required that he might make preparations accordingly, not that he should deliver the whole quantity

stated at once, for I did not want them immediately, and have no  
123 means of paying for them.

General Talcott received a letter from Mr. Kemble some time since saying that Dr. C. had offered the order to him, and that he (Mr. K.) had replied to him and agreed *to take it* provided the department consented to the transfer. Dr. C. did not wait for this consent, but at once sold the order to you.

On consulting with General T. we thought that, under the circumstances, we should decline consenting to the transfer of the order and I wrote to Mr. K. accordingly, but before any answer could be received from him, I was informed by Captain Stone that Dr. C. had transferred his order to you, and asking my instructions concerning it. I could only reply as I had to Mr. Kemble, refusing my consent to the transfer. I met Captain Walbach in Washington, at that time on his way to Richmond, and requested him to make an explanation of the matter to you; but, as you informed me, you were absent that week, he must have missed seeing you.

I was authorized by General T. to give the order, but am not provided with funds to pay for the articles, and he is not at all satisfied with Dr. Carmichael's proceedings, as it might have given him much trouble. As it is, I am glad it has fallen into the hands of a friend, for as the order does not contain the understanding we had with Dr. C. it is a plain one; and what I want 125 you to do, is to keep quiet about it and have a private understanding with General T. before doing anything in the matter. I have marked two words in the power of attorney sent, and which I return herewith, which are necessary to make it comply with the order; tho' this is of no consequence if we understand each other.

Very truly, yours,

BENJ. HUGER.

The Judge Advocate said that he offered that letter only as part of the correspondence which showed the part execution of 126 the contract with witness—and by his consent—and he now offered the whole correspondence.

And here, at 3 o'clock, the court adjourned to meet to-morrow at 10.

Thursday, 10 o'clock, 26th June, 1851.

The court met pursuant to adjournment. Present, all the members, the Judge Advocate and General Talcott.

The proceedings of yesterday were read over; whereupon, in 127 consequence of the temporary indisposition of one of the members, the court took a recess of fifteen minutes, at the expiration whereof the court again in session. Present, all the members, General Talcott and the Judge Advocate.

Colonel Benjamin Huger, a witness for the prosecution in continuation.

Judge Advocate—I proceed to offer in evidence to the point 128 stated yesterday, the correspondence in regard to the contract, and the execution of it, which passed between the witness and Anderson. The letters of Col. Huger offered appear to be originals, and will be exhibited to the witness to be identified. Of Anderson's part of the correspondence, the evidence is in part of the originals, and in part of copies. They will be likewise exhibited to witness that he may testify to the originals, and to the correctness of the copies.

This last by consent.

The Judge Advocate added, the first letter in the correspondence 129 read yesterday was of date the 6th December, 1850, I now offer a letter from Anderson to witness, dated 10th December, here exhibited.

Q. Is this letter here shown you the original letter from Anderson to you, dated Dec. 10th, 1850, and is it the next in order in the correspondence. A. Yes.

The letter then read as follows—

(*Private.*)

RICHMOND, Dec. 10th, 1850.

My dear Col.—Your letter of 6th inst. was duly received and I 130 am very much astonished to learn that Dr. C. has stated what he did to you and the General, about the place at which the shot were to be made.

I beg that you will allow me to make you acquainted with some circumstances, a simple narrative of which without any comment, will, I trust, fully justify my course in obtaining the control of the order and without waiting to communicate with you which I desired to do.

I was aware that Dr. C. had a claim on the Government for a large contract for shot and shells, for he had brought the papers 131 to me several months ago, and solicited me to unite with him in presenting and prosecuting this claim, proposing that I should be equally interested in it. I unconditionally declined the proposition, being unwilling to connect myself or establishment with a claim for a contract which I believed to have been improperly promised. Still it appeared to me the faith of the Government had been pledged and I thought it quite likely that a succeeding administration, seeing the importance of preserving the credit of the Government intact would direct the contract to be given to 132 him. His rights too were sustained by high legal authority. Upon my declining his proposition, Dr. C. asked me if I would be willing if he succeeded, to have the work done for him at the Tredegar Works. I replied unhesitatingly that I would. He said, that it would aid him very much, and asked me to put it writing, which I did, and gave him the paper.

When in Washington a few weeks ago, I met a friend who told me that Dr. Charmichael had succeeded in getting his contract  
133 and that he mentioned it to me because he was aware that I was to have the work done.

I returned home, and a day or two afterwards Dr. C. called at my office, handed me your order and said he had but a few minutes to remain, that he had several offers for it, one of which he showed me, and that unless I agreed upon terms at once he would go to the North the next day to sell his contract.

I had reason to believe that he had represented to the department that I was to make the shot and if not, I believed that you would be glad to have the order in the hands of a friend instead  
134 of being hawked about to every blast furnace in the country, and above all, I felt naturally very desirous to have the work for my establishment, and I granted him such terms as were satisfactory to him and made him an advance much heavier than I would under other circumstances have made, as I had known him long, and his family well, and knew how greatly in want of funds he was, necessary to enable him to get to New Orleans.

Now knowing me I hope well enough to feel that you lose nothing at least by the order being executed by myself instead of Dr. C., I hope you will not hesitate to grant me every facility, and  
135 I am certainly desirous of consulting your own convenience as to funds. I would like to deliver some 10 or 15,000 shot as soon as made, and I will afterwards confer with you as to the delivery of the others. Please write me, say if I shall, and send me a pair of 32 pdr. guages.

Yours, truly,  
J. R. ANDERSON.

P. S. As to the words of the power of attorney, I endeavored to make it agree with the order, I have the order among my papers however, and no doubt you have a copy of it which will be  
136 all that is necessary for your guidance. As the power of attorney makes *no transfer*, but is merely a matter between the principal and agent, designed to show you that the power to sign his name is delegated to me as agent, it appears to me that the terms of it are not essential, except so far as they designate the order under which I am acting. I put the papers in this form, believing it would be more agreeable to you than a proposition to transfer the order or contract on your books. Officially or otherwise you are not aware of any transfer or sale of the contract, and therefore you may, to me as you did to Mr. Kemble, decline to assent  
137 to a transfer, but I do not ask for a transfer. I deliver the shot in the *name of Dr. Carmichael*, and settle for him in *his name*, just in this way I filled an order Mr. Tucker had from the Bureau of Ordnance, and I hope this will satisfy you. Please drop me a line by return mail as to delivery of 10 or 15,000 shot and gagues.

Yours, J. R. ANDERSON.

*Q.* Is this your answer, to the letter just read? *A.* Yes, the letter here exhibited to witness now read as follows.

FORT MONROE, Dec. 18, 1850. 138

My dear Sir,—I have duly received your letter of the 10th inst. I do not suppose there will be any difficulty about the order for shot, I was only desirous on Gen. T's account to keep it quiet, and as far as you are personally concerned, shall be very glad if you can gain something by it.

I wish you would have an understanding with Gen. T. by writing either to Maynadier or to himself.

I will want a good many shells and sphre case shot, and after you get under way and your hand in, will send you an account of them. Our small guage has been somewhat encreased in diameter, as you will see, Ordnance Manual, page 27. I will have a set arranged as soon as possible. I was absent at Balt. for a few days and did not get your letter until my return.

With best regards,

Yours, Truly,

BENJ. HUGER.

*Q.* Are these letters here shown you, letters from you to Anderson, and are they the next in order in the correspondence.

*A.* They are my letters and I think they are the next in order. 140

The letters shewn witness, then read as follows:

FORT MONROE, Jan. 4th, 1851.

Dear Sir,—Please send me on account Ordnance Department, 300 pounds  $\frac{3}{4}$  inch round iron.

Respectfully yours,

BENJ. HUGER.

I am fitting out Capt. Stone's command for California. He expects a ship from New York daily, and he is to be off as soon as his supplies can be got on board, and I can not stop a lathe to turn the guages. I have written to Maj. Mordecai to ask for a set to be sent to you, and issued to me when you have done with them.

I am glad to see Dr. A. looking so well.

B. H.

FORT MONROE ARSENAL, }  
January 11th, 1851. }

Dear Sir,—Please furnish for Ordnance Department, 42 (forty-two) pieces rolled iron, ed.,  $2\frac{1}{2}$  feet long.  $2\frac{1}{4}$ — $1\frac{1}{4}$

Yours, BENJ. HUGER. 142

J. R. ANDERSON, Esq.

*Q.* Are these letters here shown you, true copies of the letters from Anderson to you, and are they the next in order of the correspondence? *A.* They are correct copies, and I think come next in order.

The letters of Anderson, dated January 18th and 1st Feb., 1851, here read as follows:

143 RICHMOND, January 18th, 1851.

COL. B. HUGER, U. S. Army, *Fort Monroe*.

Dear Sir,—I have received from Maj. Mordecai a pair of ring guages for 32 pdr. shot. I have the iron last ordered on hand  $2\frac{1}{4}$ — $1\frac{1}{4}$ , but would prefer not sending it, as I could not recommend its quality for important purposes. It will yet be a couple of weeks before the works are in operation, when I can make it.

Yours, &c.,

(Signed)

J. R. ANDERSON.

RICHMOND, Feb. 1st., 1851.

144 Dear Sir,—You will receive per schooner "Farmer," 3,100 32 pdr. shot, on account of your order to Dr. Carmichael. I will be pleased to have your opinion of them when inspected; and as to paying for them, suit your own convenience; we'll not have any difficulty on that score.

The captain was anxious to get his freight money at Old Point, but I had no authority from you to say he could get it, so you will use your pleasure about that.

I am yours, respectfully and truly,

(Signed) J. R. ANDERSON.

145 Col. BENJ. HUGER, *Old Point*.

This vessel engaged to take guns to Maj. Martin, for you, but went without them.

I never had as much difficulty before to ship cannon to Old Point, but I will send them the first opportunity.

(Signed) J. R. ANDERSON.

True copy.

BENJ. HUGER, *Bt. Col.*

146 Q. Is this your original letter to Anderson, and next in order?  
A. It is my original letter, and comes, I think, next in order.

The letter here shown witness read as follows:

FORT MONROE, }  
Feb. 10th, 1851. }

J. R. ANDERSON, Esq.,

Dear Sir,—I find I have no cylinder guage for 32 pdr.; will you have one made and forwarded to me by first opportunity. This guage has the same diameter as the large guage; it is made of cast iron, and is 5 calibres long. You have no doubt made them, so there is no necessity of sending you a drawing.

147 The 32 pdr. shot sent, arrived on Saturday. I will require hereafter, the following spherical case shot, instead of *shot*.

2,000	32	pdr.	spherical	case	shot.
2,000	24	"	"	"	"
3,000	12	"	"	"	"
1,000	6	"	"	"	"

The dimensions of guages (the new small guage is a little enlarged), and all the dimensions are given in the Ordnance Manual. Where it is also stated, "spherical case shot must be made with peculiar care, of the best quality of iron, in order that they may not be liable to break in the gun." To which I may add that the thickness at the bottom, should never be less than the true thickness, as this is the point which receives the shock of the balls. Please send the cylinder guage for 32 pdr. as soon as you can have it made.

Very respectfully and truly, yours,

BENJ. HUGER.

The shot have not been examined at all as yet; but I see the seams show very plainly at the juncture of the flasks as if they did not fit well.

Q. Is this a true copy of a letter from Anderson to you, and is it the next in order of the correspondence? A. Yes, I think so.

The letters of Anderson to witness, dated Feb. 17th, 1851, was read in evidence:

RICHMOND, Feb. 17th, 1851.

COL. B. HUGER, U. S. Ordnance, Fort Monroe:

Dear sir,—Your letter of 10th inst. was duly received and contents noted. I will proceed to make the projectiles ordered therein. I will send you the cylinder guage for 32 pdr. shot by 150 the "Curtis Peck" of to-morrow. The appearance of a seam on the shot must arise, I suppose, from some almost imperceptible wear of the brass pattern. The flasks are all made of iron and of the most modern and improved form, and as they fit tight, I am satisfied it does not proceed from them. Before making any more I will try new patterns, although the eye can not discern a defect in the patterns which one would think could cause the apparent ring; I say apparent, because it is more perceptible to the eye than to measurement.

There are but a few more that I will send down with Maj. 151 Martin's cannon.

Yours, &c.

J. R. ANDERSON.

Q. Is this your letter to Anderson, and next in order of time? A. Yes, it is my letter, and I think next in order of time.

The letter of Col. Huger to Anderson, dated Feb. 19th, 1851, here read in evidence as follows:

FORT MONROE ARSENAL,  
Feb'y 19th, 1851.

Dear sir,—I have guaged and examined the shot sent by you.

Several of them have cavities or small holes the depth of which 152 exceeds 0.2 of an inch, the limit allowed by the regulations.

Nearly all pass the proper guage. A few would not go through the large guage on one diameter. The calibre guage you sent me

appears to have been used a good deal, and is in one diameter 153 0.02 too large.

12 have been rejected for cavities; they extend quite a depth under the surface. 3 too large for the proper guage, and *not being round*. Total 15.

I will send you a mem. of the number received as soon as they are piled. They are a fair lot of shot compared with others, but I hope practice will still make the moulders more perfect. I should like to have those iron bars now as soon as possible.

Very respectfully yours,

BENJ. HUGER.

154 I leave to-morrow on a visit of a few weeks to Charleston.

Q. Is this letter a true copy of a letter from Anderson to witness, and does it come next in order in the correspondence? A. I believe it is a correct letter, but I was absent when it was received, and did not see it till my return from leave of absence towards the middle of April.

Letter here read as follows:

RICHMOND, Feb. 28th, '51.

COL. B. HUGER, Commanding U. S. Arsenal, Old Point Comfort:

Dear sir,—I hand you bill lading for 2000 shot. On the receipt 155 of your last, I caused a new cylinder guage to be commenced, which I will send you when finished, and the other can be returned. I was not aware that it was at all worn, and sent it, as it required some little time to make a new one.

I had the patterns for the spherical case shot to make which I have been getting up. I have just started my rolling mill, and will make the iron for you next week and forward it, finding you have not obtained it elsewhere.

Very respectfully yours,

(Signed,) \_\_\_\_\_

J. R. ANDERSON.

156 And the court adjourned to meet to-morrow at 10 o'clock.

10 o'clock, Friday, June 27th, 1851.

The court met pursuant to adjournment. Present all the members, Judge Advocate and Gen. Talcott.

The proceedings of yesterday were read over.

Col. Benj. Huger, a witness on the part of the prosecution.

*Direct examination* continued:

Q. Is this a true copy of a letter from Anderson to you, enclosing the power of attorney; is it the first letter in the series of this correspondence, and is this a true copy of the power of attorney therein enclosed? A. Yes; this is a true copy of the letter. I think the original letter was presented to the court day before yesterday. This is a true copy of the power of attorney.

The letter and power of attorney here read as follows:

RICHMOND, Nov. 20th, 1850. 158

COL. B. HUGER, U. S. Army, Old Point:

Dear sir,—I enclose a power of attorney from Dr. E. H. Carmichael to attend to his order for shot, &c. Be good enough to place it on file, and to send me the necessary 32 pdr. guages.

Very respectfully yours,

(Signed,) \_\_\_\_\_

J. R. ANDERSON.

Know all men by these presents, that I, Edward H. Carmichael, of the city of Richmond, and the state of Virginia, do hereby constitute and appoint Joseph R. Anderson of said city, my true and lawful attorney for me, and in my name and behalf to receive and receipt for any and all payments due or that may be due me, for deliveries of shot or shell under an order from Benj. Huger, Brevet Colonel, Fort Monroe Arsenal, for 500 tons 32 pdr. shot, and such other quantity shot and shell not exceeding 500 tons, as the department may order, dated 8th November, 1850, hereby as fully confirming and ratifying all the acts of my said attorney in the premises, as if done by me in person; and I hereby agree and stipulate that this power shall in no wise be revoked without the written consent of said Anderson, my attorney. 159

In testimony whereof, I have hereunto affixed my hand and seal this 18th day of November, 1850. 160

(Signed,) \_\_\_\_\_

EDWARD H. CARMICHAEL.

*Witness,*

(Signed,) JOHN F. TANNER.

Q. So far as you know and believe, are the letters which have been exhibited to the court the entire correspondence between yourself and the proprietor of the Tredegar Works, Mr. Anderson, on the subject of your order to Carmichael? A. I believe they are the entire correspondence; they were considered unofficial by me, and no record was kept of them.

Q. Did you see Mr. Anderson during the period covered by 161 the correspondence? A. No.

Q. After your return to Old Point, in November, 1850, did you receive any further instructions from Gen. Talcott in regard to your order to Carmichael, or any instructions revoking the authority in regard to estimates and deliveries conveyed to you in his, Gen. Talcott's, letter of the 6th Nov., 1850. A. I received none whatever on the subject from Gen. Talcott, until a letter from him dated 11th April.

The defence asked now for the letter of the 11th April. The Judge Advocate said he did not propose to put it before the court, until, in the due course of the investigation, he had come to the events of the 11th April. But at the request of the defence, he now offered the letter. 162

It was read as follows:

163

ORDNANCE DEPARTMENT,  
Washington, April 11th, 1851.

BREVET COL. HUGER, *Fort Monroe Arsenal.*

Sir,—You are requested to furnish this department all the information in your possession concerning any contract, order or arrangement of any kind, with Mr. J. R. Anderson, to furnish for himself, or any other person, shot or shells for Fort Monroe, or the arsenal.

164 Please report the character of such arrangement, (copy of agreement or order,) what articles have been called for under it, and what deliveries made, with any remarks or explanations on the subject that you may deem proper.

Respectfully your ob't serv't,

(Signed) G. TALCOTT,

*Bt. Brig'r Gen., Col. of Ordnance.*

Q. Were you present at any conversation between Carmichael and Gen. Talcott, and do you know anything that Carmichael said to the General? A. I never saw them together during any part of this business.

165 Q. Had Anderson any contract with you, or any order from you, for 32 pdr. shot, other than the order to Carmichael. A. None.

The direct examination of this witness rested here for the present.

*Cross examination—*

Q. Had you any communication, direct or indirect, official or otherwise, with Gen. Talcott, touching the order to Carmichael, or the transfer to Anderson, after the refusal to recognize the transfer to Anderson in Nov., 1850, until you were ordered by Gen. Talcott to report to him upon that subject in April last?

166 A. None whatever.

Q. Have you here a copy of the report made by you in pursuance of that order; if you have, produce it? A. I have not a copy, and did not bring one as the original is on file here in the ordnance office.

Original here handed to defence by Judge Advocate for their examination, with the remark that the prosecution would offer it when it was reached in the order of time.

167 Q. Did you at any time, and when, report to him that any attempt had been made to carry the order to Carmichael into effect by the delivery of shot or otherwise? A. I made no report to him whatever on that subject, till my reply to his letter of the 11th April, calling for a report.

Q. Had you any further or other authority from Gen. Talcott in reference to the procuring of the shot and shells, than the order of the 6th Nov., recited in the charges? A. No sir.

Q. Did you ever make any estimates of funds required for

payment for the shot sent to Fort Monroe by Mr. Anderson? *A.*  
None.

*Re-examined by Judge Advocate—*

168

*Q.* You say, on the cross examination and in answer to the question next before the last, that you had no further authority from General Talcott in reference to the procuring of shot and shells than the order of the 6th November. Do you mean that you received no authority from him personally here in November 1850? *A.* None, unless his approval of my letter to Anderson by Stone, and my letter to Kemble, be considered as such, which I do not.

No further examination of this witness at present by the prosecution or defence. 169

The court was here closed, and, after deliberation, again opened.  
Present, the accused.

Col. Huger a witness.

*Q.* by the court. In the correspondence between the witness and Mr. Anderson, which has been read, about shot and shells, did the witness consider Mr. Anderson as making these shot and shells on account of the order to Dr. Carmichael or on his own (Anderson's) account, or on any other account? *A.* I considered him as making them at his own risk, under the order transferred to him by Carmichael, and expected he would get the consent of 170 the department.

*Q.* by the court. In one of your letters to Mr. A. you speak of the inspection of certain shot delivered by him, and also of the reception of shot. You, in another letter, order some shrapnell shells for him. Were these things connected with, or in execution of the order of General Talcott in favor of Dr. Carmichael? If not, under what authority were they said or done? *A.* There was no official inspection of the shot. They were inspected by me in compliance with a request from Mr. Anderson contained in one of his letters. Directions for an official inspection are contained in the regulations of the Ordnance Department in articles 116, 117, 118. 171

The articles referred to by witness read here as follows:

The inspection and proof of ordnance and projectiles, shall be made, under the direction of the Colonel of Ordnance, by such officers of the Ordnance Department as the Secretary of War may, from time to time, designate for that purpose; who will be held strictly responsible that all ordnance and projectiles received by them for the United States, shall have been subjected to the inspection and proof required, and that they shall conform, in all respects, to the established models.

The inspecting officer of ordnance and projectiles at the foundries, shall give to the contractors triplicate certificates of inspection 172 according to form No. 32.

Duplicate reports of inspection of ordnance and projectiles at the foundries (forms 33 and 34,) shall be made immediately after

each inspection, one copy to be forwarded to the Chief of the Ordnance Department; and in the month of October, a consolidated report (form 35) of all such inspections made during the 173 year ending 30th September, shall be forwarded by the inspecting officer to the Chief of the Ordnance Department. The inspecting officer will keep books in which shall be recorded all reports which he is required to make, and all correspondence connected with this particular service. These books will be carefully preserved, and in case of relief, turned over to his successor.

*Col. Huger, a witness:*

Q. by the court. Did the witness ever, directly or indirectly, make known the fact, to the Ordnance Bureau or its Chief, or to 174 the War Department, that said Anderson was employed in making shot and shells as set forth in the correspondence? A. No.

Q. by the court. Was the freight for the delivery of said shot and shells, as set forth in the correspondence which has been read, paid for? If so, by whom and on what account? A. The bills of lading made them payable by the shipper. For the convenience of the captain I did pay the freight on account of Mr. Anderson, and not on account of the United States.

Q. by the court. Under the general instructions of General Talcott of November 6th, 1850, to procure the shot and shells by open purchase, how came the order to be given to Carmichael. 175 A. Because he brought it to me was one reason, and I expected them to be made at a foundry near Fredericksburg, from which I had formerly received both shot and shells of very good quality.

Re-examined by Judge Advocate upon the examination by court, by permission of court.

Q. You state in your answer to the court, that you considered Anderson as sending the shot at his own risk, and that you expected him to procure the consent of the department. Did you say anything on this point to Anderson other than is found in the letters before the court. A. Nothing.

176 Witness said, I desire to make an explanation under permission of the court, and to say that I considered the correspondence with Mr. Anderson private, as I had already given him my official answer by Captain Stone, and as it commenced in an argument on his part to convince me that he had a right to deliver the shot under the power of attorney, in which I thought he was in the right; but I expected him to procure the consent of the department, and which I thought would be granted, because I could see no detriment to the United States in so doing.

Q. by Judge Advocate. As your letters to Mr. Anderson before the court are not marked private, and were on official business, 177 do you consider he was warned that you regarded them as private? A. He received no warning. My letters are not marked private, but his first and second letter was so marked.

The Judge Advocate then said to witness—I am directed to bring to your attention the question heretofore put by the court, and to ask an answer to that part of it which refers to shrapnell shells, or spherical case shot.

*A.* The letter ordering them states, that they are to be furnished instead of shot, and it was my intention to have them furnished under that order to Carmichael, and at the rates therein specified, otherwise they would cost a much higher price. None were furnished. I received, in the month of April, an order from the Secretary of War to receive no supplies of shot or shells from any founder or manufacturer, a copy of which I enclosed to Mr. Anderson.

*Joseph R. Anderson*, a witness for the prosecution, sworn in due form of law.

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*Examination in chief*, by Judge Advocate.

*Q.* Did you send any 32 pdr. shot in this year to Col. Huger for the United States? If so, under what authority did you send them? *A.* I did make two shipments under the authority of an order to Dr. Carmichael from Col. Huger, assigned to me by Dr. Carmichael. I also held a power of attorney from Dr. Carmichael to deliver the shot, to which I have referred in his name.

*Q.* How many did you deliver? *A.* I don't remember the exact number delivered. I think between five and six thousand.

*Q.* What objections were made, if any, by Colonel Huger to receiving shot from you under that order. *A.* The objection I believe, was in a letter from Captain Stone. It is contained in this letter of 26th November, from Captain Stone. (Captain Stone's letter of that date, heretofore entered on this record at page , here shown the witness.) I did not regard this objection as final.

Here the accused interposed the following objection :

The accused respectfully suggests that it can have no weight or bearing upon the charges or specifications against him, to ascertain what was the construction put by the witness upon written papers already before the court, and that even if any inference could be drawn from such construction, (which the accused does not perceive), the admission would not be justified by any precedent, so far as he is advised, in any court, civil or military.

The questions put by the court to Col. Huger, stands upon totally distinct ground, being in the nature of cross examination by the court, in order to reconcile supposed contradictions in the testimony of that witness.

G. TALCOTT,  
*Bt. Brig'r Gen., Col. of Ordnance.* 182

The Judge Advocate said he had laid before the court the correspondence between Col. Huger and Mr. Anderson, to prove the

execution of the contract. The letters were the evidence of their own contents, and he had not thought it admissible to give Col. 183 Huger's construction of them. But as in answer to enquiries from the court, Col. Huger had put his own understanding of the letters in evidence, and the facts connected therewith, the Judge Advocate felt under a necessity to offer this testimony from the other party to the correspondence, the witness now under examination.

And the court being cleared, after due deliberation decided "that the objections be overruled, and the witness proceed."

The court was then opened, and the decision announced.

The witness, Joseph R. Anderson, continued his testimony on 184 his direct examination as follows:

I did not regard this objection as final, because Capt. Stone states (I read the words from his letter) that he, Col. Huger, thinks Dr. Carmichael had, *under the circumstances*, no right to transfer his order for shot without first consulting him, and obtaining his consent; and I regarded the subsequent letters of Col. Huger as giving his consent.

*Q.* When, if ever, did you receive orders to stop the work?

*A.* I received notice from Col. Huger in writing, (I have it not here,) some time subsequent to the 12th April, of this year, of 185 orders received by him directing him to receive no more shot; I will add, that previously to my receiving this letter from Col. Huger, I heard the Secretary of War give such orders to Gen. Talcott; this happened in my presence, and I think on the 12th April.

*Q.* Did you at any time while you were executing, as you supposed, the order of Col. Huger to Carmichael, notify Gen. Talcott thereof? *A.* I did not.

*Q.* Do you mean to say that you never have to this day? *A.* I received a letter from Gen. Talcott, dated, I think, the 10<sup>th</sup> 186 April, 1851, making enquiries of me; I answered that I never notified him before.

*Q.* What amount, if any, did you give Carmichael for the privilege of executing his contract, as assignee and attorney? *A.* Six thousand five hundred dollars, \$6,500'00; I paid him that.

*Q.* Are you the proprietor of the Tredegar Iron Works in Richmond? *A.* I am.

On reading over his testimony to witness for correction, he said "I wish to add to that part of one of my answers which states that I considered Col. Huger's letters subsequent to the 187 letter of Capt. Stone dated 26th Nov., 1850, as giving his consent, and say that I considered his letters and acts as giving that consent.

Questions by Judge Advocate:

*Q.* Had Dr. Carmichael any foundry or any interest in any foundry when he obtained the order from Col. Huger? *A.* None that I know of.

Q. Had you ever any conversation with Gen. Talcott on that subject? A. I never had prior to the 12th April, when I called in person to answer his letter, of the 10th April, which I had received as I was passing through Washington.

And here the hour of 3 having arrived, the court adjourned to meet tomorrow at 10.

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10 o'clock, Saturday 28th June, 1851.

The court met pursuant to adjournment. Present, all the members, Judge Advocate, and Gen. Talcott.

The proceedings of yesterday were read over. Morris Adler, a witness on the part of the prosecution being sworn in due form of law, testified as follows:

Q. Are you a clerk in the Ordnance Office of the War Department, if yes, how long have you been so? A. Yes and I have been since the year 1832.

Q. Say whether or not you furnished Dr. Carmichael with a list of the prices paid by the Ordnance Bureau for shot, and if you did, state what passed between you and Gen. Talcott on that matter, if any thing, and give the time as near as you can. A. I gave the prices. It was my own act on the same morning I acquainted Gen. Talcott with the fact, to which he made no objection. I think it was on the 7th of November, 1850.

Q. At that day, the 7th November was the letter from Gen. Talcott to Col. Huger, dated the 6th November, 1850, in regard to open purchases of shot at Fort Monroe recorded in the office, and did you know of it? A. Dr. Carmichael presented to me the order when he asked me for the prices.

Q. Did you give the lowest prices? A. I thought I had, I gave the prices rather hurriedly to Dr. Carmichael; the same day I think, I looked over the book, and discovered, an account of shot procured from Savary and Co. of Philadelphia, who had furnished some at  $2\frac{3}{4}$  cents per pound. I felt much mortified at this oversight, and I immediately informed Gen. Talcott of it. He expressed great displeasure at this oversight of mine and censured me a good deal for having furnished the prices at all in the first instance. I asked the General what I should do about it. He said nothing. I then stated to Gen. Talcott that I would write a private note to Col. Huger, to which he made no objection, and I wrote the note.

Q. At what hour of the day did furnish the memorandum to Carmichael, and at what hour did you first inform Gen. Talcott thereof? A. It must have been between 8 and 9 in the morning that I gave the memorandum; before office hours, I informed Gen. Talcott directly after he came to the office, which was about his usual hour of coming, about 9 or a little after,

Q. Do you know the hour at which the cars leave here for

Baltimore. The first train after 8? *A.* I never go to Baltimore, I did not then know the hour, except what Dr. Carmichael told me.

193 No cross-examination by defence.

Capt. Wm. Maynadier, U. S. Ordnance Department, a witness on the part of the prosecution recalled.

*Examination in chief, resumed—*

*Q.* You stated when previously before the court, that you returned on the 11th November to the Ordnance Office (from which you had been for a time absent,) state now, when thereafter, you first, if ever, had any conversation with Gen. Talcott on the subject of any contract given to Carmichael, for shot, and state all that passed between you and the General on that subject? *A.*

194 When I went to the Ordnance Office on the 11th November, 1850, I mentioned to Gen. Talcott the substance of a conversation I had just had with a gentleman on the street, which was that the gentleman asked if it was true that Dr. Carmichael had got a big contract for shot from the Ordnance Department; that he had heard such was the case; and that Dr. Carmichael had offered it for sale to a founder in Baltimore, that I had informed the gentleman that I had been absent from the office, since the middle of Oct. and knew nothing about, but that I would examine the books at the office, and let him know if it was so.

Gen. Talcott told me that he knew nothing about the contract referred to in the conversation; and that all that had been done in the relation to the purchase of shot during my absence would be found in his letter to Huger of the 6th November, which was on record; I read that letter as copied on the books.

*Q.* Were you informed by the Gen'l that the letter had been sent to Huger by Carmichael? *A.* I was not; either that it had or had not been so sent.

*Q.* When, if ever, and what was the next communication between yourself and Gen'l Talcott in regard to an alleged contract with Carmichael for shot? *A.* To the best of my recollection, the next communication between us, on that subject, was about the end of December, 1850, when I read a letter to him from Mr. Anderson, who enclosed to me therein a copy of the order of the 8th November, from Huger to Carmichael, which is on your record. It was a private letter, in reply to one which I had written to Mr. Anderson, answering one he had previously written to me sometime after the middle of December, and in which he enquired whether I knew, whether there was anything personal to him in the objection which Huger seemed to have to his executing the order to Carmichael. This letter I have not preserved. My answer was that I knew nothing of the facts of the case, and could give no opinion on it; that I did not even know what Huger's order to Carmichael was, as I had never seen it.

*Q.* When you read as you say, to Gen'l Talcott, Anderson's letter, did you read him also, the enclosed copy of the order from

Col. Huger to Dr. Carmichael? *A.* I showed it to him; I don't think I read it to him.

*Q.* Did the Gen'l make any explanation or remark to you on 198 the subject of the order to Carmichael? *A.* He made none.

*Q.* Will you read to the court the 132d article of the regulations for the government of the Ordnance Department? *A.* The 132d article of the ordnance regulations reads as follows:

No contract for the service of the Ordnance Department, shall be made by any officer or agent thereof, except by special authority from the chief of the Ordnance Department, sanctioned by the Secretary of War; and all officers or agents making contracts shall strictly observe the provisions of the laws on that subject. (See appendix No. 2.) Contracts shall be made in triplicate, one 199 of which shall be forwarded to the chief of the Ordnance Department, at the date of the contract, that it may be deposited in the office of the second comptroller within ninety days thereafter, as the law directs.

*Q.* Will you read the *provisions of laws* which the article just read refers to? *A.* The article refers to appendix No. 2, which read as follows:

#### APPENDIX No. 2.

##### *Extracts from laws relating to contracts.*

200

Article 1st. All purchases and contracts for supplies or services for the military service of the United States, shall be made by or under the direction of the chief officer of the Department of War.

2. From and after the passage of this act, no member of Congress shall, directly or indirectly, himself or by any other person whatsoever in trust for him, or for his use or benefit, or on his account, undertake, execute, hold or enjoy, in the whole or in part, any contract or agreement hereafter to be made or entered into with any officer of the United States, in their behalf, or with any person authorized to make contracts on the part of the 201 United States.

3. Nothing contained in the preceding article shall extend, or be construed to extend, to any contract or agreement, made, or entered into, or accepted, by any incorporated company, where such contract or agreement shall be made for the general benefit of such incorporation or company; nor to the purchase or sale of bills of exchange, or other property, by any member of Congress, where the same shall be ready for delivery, and for which payment shall be made at the time of making or entering into the contract or agreement.

4. In every such contract or agreement, to be made, or entered into, or accepted, as aforesaid, there shall be inserted an express condition that no member of Congress shall be admitted to any share or part of such contract or agreement, or to any benefit to arise thereupon. 202

5. All purchases and contracts for supplies or services which are, or may, according to law, be made by, or under the direction 203 of, either the Secretary of the Treasury, the Secretary of War, or the Secretary of the Navy, shall be made either by open purchase or by previously advertising for proposals respecting the same; and an annual statement of all such contracts and purchases, and also of the expenditure of the moneys appropriated for the contingent expenses of the military establishment, for the contingent expenses of the navy of the United States, and for the discharge of miscellaneous claims, not otherwise provided for, and paid at the treasury, shall be laid before Congress at the beginning of each year, by the secretary of the proper department.

6. No contract shall be made by the Secretary of State, or of 204 the Treasury, or of the Department of War, or of the Navy, except under a law authorizing the same, or under an appropriation adequate to its fulfilment.

7. No advance of public money shall be made in any case whatever; but in all cases of contracts for the performance of any service, or the delivery of articles of any description, for the use of the United States, payment shall not exceed the value of the service rendered, or of the articles delivered previously to such payment; provided, that it shall be lawful, under the special direction of the President of the United States, to make such 205 advances to the disbursing officers of the government, as may be necessary to the faithful and prompt discharge of their respective duties, and to the fulfilment of the public engagements.

Q. Those are all the provisions of law referred to in that article, to wit, 132d article of the ordnance regulations? A. Those are all.

Q. Will you read to the court the articles on the subject of contracts which follow the 132d article, or any others which bear upon that subject? A. The only other articles bearing on that subject which follow the 132d article read as follows:

206 133. The rights vested in a contractor, for services to be performed, or supplies to be furnished for the Ordnance Department, shall, in no case, be transferred to any other person or persons; but such contractor shall be held to his legal responsibilities, and all payments shall be made to him only.

134. Payments on account of any contract to the amount of four-fifths of the value of work done, or of services performed in part, may be made, in case the contract embraces operations of long continuance. Such payments on account, under an unfulfilled contract, not being admitted at the treasury, will not be charged 207 in the quarterly accounts; but a statement of all such, specifying the amount of each, will be annexed to the duplicate account current, which is designed for the files of the ordnance office, in order that the true state of the funds on hand may be known.

Witness continued—

There is another article on this subject which precedes those I

have read, being the article No. 8 of the Ordnance Regulations; it reads as follows:

8. Ordnance and ordnance stores shall be provided by open purchase, by fabrication or by contract, as may be most advantageous to the public service. They shall be provided by ordnance officers only, except when otherwise specially directed by the chief of the Ordnance Department, or in cases of urgent necessity; and in such cases a report and certificate showing the necessity, from the officer ordering the purchase, will be required for the admission of purchase at the treasury.

The Judge Advocate said he would interrupt the witness, to put before the court the letter which witness had received from Anderson, and which he read to Gen. Talcott, as heretofore stated in his testimony.

The letter here read as follows:

(*Private.*)

RICHMOND, Dec. 26th, 1850.

My Dear Maynadier,—Your esteemed favor of the 24th, is received, and as I wish you to know the exact facts, I enclose a copy of Huger's order to C.

Now, when it is remembered that C. applied to me to unite with him as a partner in his application for these shot, which I declined, as I was unwilling to be his partner, and that I did give him, at his solicitation, a written promise to make the shot at the "Tredegar Iron Works," if *his* claim should be allowed, and that he asked for the writing that he might show the department that he had the means of complying with his engagement, you will not think it strange that I supposed H. and the General knew when they gave him the order that I was to make the shot, and when I took up the order which he was hawking about, I supposed, and am certain still, if they knew the facts they would thank me. And for this reason, if no other, that they knew I would say to them, I will consult your own convenience 210 about the time of executing this order. Now, when C. brought the order to my office, he made another proposal of partnership in the manufacture of the shot, which I declined for reasons that may be well understood by those who know Dr. C. well. He was about going to New Orleans with his family to live, and asked me a very large sum, which I gave him, for the unconditional transfer of the order; I have not thought proper to state this officially or otherwise, to Col. H., because I also took from Dr. C. a power of attorney to deliver and settle for shot *in his name*, thinking that might be more agreeable to him, and perhaps he and the General might prefer not to know that Dr. C. had sold his contract; I know you will not communicate it if best not to do it; but you perceive, with Dr. C. I could not be safe unless I took in the order.

I am yours, truly,

J. R. ANDERSON.

Q. How many contracts for cannon and projectiles have, since you have been connected with the Ordnance Bureau, been executed in the written form directed by the 132d article which you have read. A. I remember but one; that was a contract made on previously invited proposals for furnishing certain heavy cannon, while Mr. Wilkins was Secretary of War; I have examined the records, and find none other made in that form.

Q. What form and mode of making such contracts has been followed in all other cases, or generally? A. The form has generally been, to give an order to a founder directing him to make for the Ordnance Department a certain number of cannon or projectiles. That has been the general rule; the formal written contract within in triplicate made by Mr. Secretary Wilkins, is the exception. I say written in triplicate because, if the regulation was followed, it was so written; but I am not sure that it was. I can examine the books, however, if it be material, and see.

Q. You say the form of making these contracts has been by giving orders to founders. Have these orders been in writing, and by what officer given? A. They have been in writing, and given by the chief at the Ordnance Department.

Q. Is there any established form of language in which these orders have been expressed? A. The orders sometimes bear on their face the evidence of having been given by direction of the Secretary of War, by stating such to be the case. But more frequently they bear no such evidence, and appear to emanate from the Chief of the Ordnance Department.

Q. Have you knowledge of particular instances wherein the order does not state that it is given by direction of the Secretary of War, and was yet, in point of fact, given in pursuance of his instructions; or are you able to state generally how this fact has been in such cases? A. I have no knowledge on that subject. I never questioned the authority of the Colonel of Ordnance, or where he got his authority.

Q. Is it the usage in the Ordnance Department, in ordinary speech and in letters and reports to the War Department, to style these engagements between the government and the founders, contracts? A. We sometimes call them contracts and sometimes orders, and are not particular about the distinction of those terms.

Q. Does the bureau make a consolidated report to the War Department, of contracts and purchases, annually, and is such report sent to Congress with the Executive message? A. The bureau makes annually, to the Secretary of War, a statement of all contracts made, and a separate statement of open purchases. These statements are made to be laid before Congress in compliance of 5th sec. of the act 3d March, 1809.

Q. Under which head, in these reports or statements, are these orders to founders entered? A. Under the head of "open purchases" always.

Q. How are your small arms designated in reference to the fabrication? A. As national armory, and as contract arms.

Q. How are these last procured? A. From private manufacturers. Formerly they were generally on written contracts according to the forms prescribed by law and regulations; but sometimes on extensions of those contracts by written orders; latterly, I think they have been procured more generally on such orders.

After examination of the record book the witness added: In the years ending December 1846, 1847, 1848 and 1849, these contracts, arms were procured entirely on written orders, and are reported among the open purchases.

Q. Did the Secretary of War call on the Ordnance Department, on the 21st January of this year, for a statement of all contracts chargeable upon certain appropriations? A. He did.

Q. Did you answer the call? A. I prepared the answer from the records of the Ordnance office and took it to General Talcott, who was temporarily confined to his quarters by indisposition.

Q. In this report to the Secretary, in answer to his enquiries about contracts, did you report as contracts, and style contracts, engagements contracted by these written orders? A. I did. No other species of contracts constituting charges upon those appropriations then existed to my knowledge. At the suggestion of the general, for more complete explanation to the secretary, I added a note specifying the articles and quantities to be delivered under the orders. The particular phraseology of the note is my own.

The Judge Advocate said he had exhibited the papers to the witness to enable him to put exactly in evidence the words of the papers about contracts; the papers themselves belong to another part of the case, and therefore are not now offered for the record.

The defence had no objection.

Q. Have you an abstract showing all the contracts and open purchases from Wellford's foundry. A. I have none with me.

The Judge Advocate said that he must have that information before the court.

The Judge Advocate proposed to suspend the direct examination of this witness and call another witness who had applied for his discharge, to which proposal the court assented.

*Joseph R. Anderson*, a witness recalled by prosecution. Direct examination resumed by Judge Advocate.

Q. Who paid freight on the 32 pdr. shot you sent to Old Point Comfort? A. It was paid by the commanding officer of the arsenal.

Q. Have you refunded it to him, or authorized it to be charged to your account? A. I have not refunded it, and Colonel Huger, in the customary quarterly settlement which has since taken place, has not charged me with this freight; I mean the public account between the United States and my establishment for iron,

shells for experiments, and such other articles as the Fort Monroe Arsenal procure from me.

- 223 Q. Has he given you notice of any such charge against you on your private account? A. None. I have no private account with Colonel Huger.

Q. Where did Dr. Carmichael live of late years, and what his occupation, and what his pecuniary responsibility? A. He has lived in Richmond of late years, is a physician, and I think is generally regarded as insolvent.

And here the court adjourned to meet on Monday, the 30th instant, at 10 o'clock.

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224 Monday, 10 o'clock, June 30th, 1851.

The court met pursuant to adjournment. Present, all the members, the Judge Advocate and General Talcott.

The President of the court stated that General Walback's health did not permit him to continue to sit as a member of the court; that the General had been laboring under a serious indisposition for several days, with no prospect of a speedy convalescence, and that he thought the General ought to be excused from the court.

General Walback stated that he was quite sick, but if it should 225 be the pleasure of the court, he would endeavor to sit.

The prosecution and defence were desirous that General Walback should remain if his health would permit, but desired to leave it to be decided by himself and the court.

Whereupon, by consent of the court, General Walbeck retired and vacated his seat.

The proceedings of yesterday were read over.

Captain William Maynadier, a witness for the prosecution, in continuation.

*Direct examination—*

- Q. You have read to the court from 133d article of the Ordnance Regulations, that the rights of contractors shall not be transferred; that each contractor shall be held to his legal responsibilities, and all payments shall be made to him only; will you state to the court now, whether, according to the established usage of the Ordnance Bureau, and of the Treasury, payments on contracts, as well as on all other accounts, are not made to attorneys on power of attorney, duly authenticated, and also to heirs and legal representatives? A. A payment to a regularly constituted attorney, on proper powers of attorney, in the Ordnance Office and in the Treasury, is regarded as a payment to the person himself, and in like manner to heirs and legal representatives, on due evidence.

Q. Are projectiles for cannon ever found by government ready made and for sale in the market, or have they ever been pro-

cured except when made to order? *A.* Never to my knowledge.

*Q.* You have said that supplies are procured by the Ordnance Bureau on written orders, and that these engagements by the usage of the bureau are designated as "*contracts*," and as *open purchases*;<sup>228</sup> will you now say what distinction, if any, between "contracts" and "open purchases" according to the usage of your bureau, is conveyed by an order to procure shot by "open purchase only?" *A.* I understand such an order to prohibit the making of a formal written contract, but as authorizing an order to be given to supply the shot at discretion as to the *person*.

*Q.* Describe the process of making payment to a contractor where the contract or open purchase is made directly with the Ordnance Bureau? *A.* The inspecting officer of the articles procured, sends to the ordnance office certificates of inspection, setting forth the articles inspected and received; to that certificate is appended evidence of the receipt of the articles by some officer or agent of the Ordnance Department, also the account of the person furnishing the supplies; these papers are examined in the ordnance office, and are then transmitted to the second Auditor of the Treasury, with a statement endorsed that the within account has been examined, and so much is found due therein to a certain person, to be paid from such an appropriation; then the Ordnance Department is done with it; it then becomes a treasury matter; and then, after examination by the auditor, it is sent to the the second comptroller for further examination; <sup>229</sup> the comptroller returns it approved for so much, and the auditor sends it to the Secretary of War in order that he may draw on the Treasury Department a requisition for its payment.

*Q.* Describe how the payment would be made in case of a formal written contract under seal, and made by an officer commanding at an arsenal, and what notice of such payment would be furnished to the Secretary of War in the ordinary course of office? *A.* The contract itself would be sent to the Ordnance Bureau, and submitted to the Secretary of War for his approval before being filed in the second comptroller's office; payments <sup>230</sup> under the contract would be made by the disbursing officer of the arsenal, on ordinary vouchers, which would accompany his next account current; that account current would be examined in the ordnance office and transmitted to the second Auditor of the Treasury for settlement, with a letter from the chief the Ordnance Department informing the auditor whether he approved or disapproved of all or any particular part of it.

*Q.* Now inform the court how payment would be made under "an open purchase" made by an officer commanding an arsenal, and what notice of such payment would be furnished to the Secretary of War in the ordinary course of office? *A.* Payment would be made by the disbursing officer of the arsenal, on ordinary vouchers, which would reach the ordnance office with his next account current, and go through the same process of exami-

nation and transmittal to the second auditor as stated in the previous answer; no notice to the Secretary of War of such payment would be furnished that I know of; the Secretary of War has the power to call for all accounts of officers of the army in the Treasury Department.

Q. Is such examination of the accounts of disbursing officers, after they have passed into the Treasury Department made by the Secretary of War in the ordinary course of office, or have you ever known it to be done? A. It is not ordinarily made, and I have never known it to be done.

Q. Say if you know of any mode according to the course of your office, and the settlement of accounts there, by which a large amount of shot could be procured and paid for and not be brought directly to the knowledge of the Secretary of War, except by an "open purchase" made by a disbursing officer at an arsenal? A. Even by the last mode it could not escape being reported to the Secretary, (in the annual report of the operations of the Department made before each session of Congress;) that so many shot, or other articles, had been procured during the preceding fiscal year by fabrication of purchase. If the articles had been paid for through the Ordnance Office, such payments would appear on the annual statement of articles procured by open purchase, or contract, as the case might be; but they would not appear on that statement if paid for by the disbursing officer of the arsenal. When paid for through the bureau, the statement would show that they had been procured by contract or purchased. When paid for by the arsenal, the Secretary would not distinguish from the reports what articles were procured by fabrication and what by purchase. They would be lumped together.

Q. Does your office, make an annual report to the Secretary of War showing *in detail* the articles procured by purchase or contract during the year. If so, state how that report is made? 236 A. The office makes annually in January, a statement of contracts made during the year ending the previous December; and a separate statement of articles obtained by open purchase or ordered during the same year.

The first statement specifies names of contractors, articles contracted for, the price to be paid, the place of delivery, the date of the contract, and by whom made.

The other statement specifies from whom purchased or ordered, the articles purchased or ordered, the place of delivery, the price paid or to be paid, and the date of the order.

237 Q. Are these statements confined to the articles procured by the bureau, or do they include the purchases made by disbursing officers at the arsenals? A. They do not include the purchases made by disbursing officers at the arsenals, but are confined to those made by, or paid through the bureau.

Q. Have you ever known a founder offering to enter into contracts to furnish projectiles for cannon, referred by the bureau to

the officer commanding an arsenal, or have you known such contracts or purchases made otherwise than by the bureau? *A.* I do not recollect ever to have known a founder so referred. In some instances when an officer *at an arsenal* wants a supply of 238 shot to fill an order for supplies, or to enable him to carry on the operations of his arsenal, he has ordered them directly from a founder and paid for them himself.

*Q.* Have contracts for small quantities of projectiles been made directly by the bureau? *A.* Not for small quantities. I should call anything over ten tons a large quantity. That is my opinion merely. All quantities of projectiles for cannon, exceeding those required to fill orders for supplies, or for some special purpose at an arsenal, have been ordered by the Ordnance Bureau.

*Q.* Have you ever known so large a contract for projectiles as 239 one for 500 tons given at any one time to one establishment? *A.* I have never known so large an amount ordered at one time from any founder. I will, however, add that during the Mexican war, when we were fitting out the expedition for Vera Cruz, unlimited orders for shells were given to many founders; that is to say, they were authorized to make as many as they could make by a given time.

*Q.* Does your office, in issuing orders to an officer of ordnance, directing an inspection at a foundry, set out in the order, that the Secretary of War appoints him an inspecting officer for that 240 purpose? *A.* It does not generally; it may sometimes.

*Q.* When was the last work done by the foundry of Wellford, near Fredericksburg, for your department? *A.* The last delivery of projectiles was *in April, 1847*; I don't know when the work was done.

*Q.* Is there any information in your office in regard to the suspension of operations by that foundry, after the death of Mr. John S. Wellford? *A.* There is no information there that I know of in regard to the suspension of operations; there is information showing the death of Mr. Wellford; I do not recollect the time. 241

*Q.* Will you examine this paper; say if is a copy of a report from your office to the War Department? *A.* I believe it to be a true copy.

*Q.* Can you say what change in the state of the appropriations referred to in that report, or the supply of cannon balls in the possession of the Ordnance Department, had taken place between the date of this report, 8th January, 1851, and the 1st November, 1850, exclusive of the contract with Carmichael? *A.* No material change that I am aware of.

The Judge Advocate here offered the copy of the report, 242 which copy had been exhibited to the witness, with the question preceding the last, and said to the defence that he had received this copy from the War Department, where he had been informed

that the original report had been sent to Mr. Calvin. The defence required no further proof, and admitted the copy.

The report was here read as follows:

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ORDNANCE DEPARTMENT,  
Washington, January 8, 1851. }

HON. C. M. CONRAD, *Secretary of War:*

Sir—In answer to Mr. Samuel Calvin's letter of this date, referred to this office, I have to report, that our present supply of cannon balls, in proportion to that of cannon and gun carriages, is such as to render it unadvisable to enter into a contract for a further supply of balls. The amount of available funds which can be legitimately applied to this object, is now quite limited. The prices which have been paid for cannon balls, have varied, according to the state of the iron market, from two cents to three and a quarter cents per pound. Now that iron is unusually low, I suppose that they could be procured at the cheapest rate.

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Mr. Calvin's letter is returned herewith.

Respectfully your ob't servt.,

(Signed.) G. TALCOTT,  
*Bt. Brig. Genl. Colonel of Ordnance.*

*Cross-examination* by defence.

Q. If Col. Huger had received, on public account, the shot and shells delivered by Anderson, would not the regular and necessary course to pay for them have required him to forward to the Ordnance Bureau estimates specifying the quantities and prices of the shot and shells? and would it not have been necessary to have the Secretary of War's requisition, specifying the appropriation, before the money could be drawn from the treasury necessary to pay for them? A. It would have been necessary for Col. Huger to have forwarded an estimate to the Ordnance Department, stating what funds he required, for what purpose, and from what appropriation; and he could not have got the money without a previous requisition from the Ordnance Department on the Secretary of War, stating in gross the amount to be remitted, and the appropriation under which Col. Huger was to be held accountable for the same.

Q. If the amount required was unusual, or if for any other reason the Secretary desired to enquire into the particulars, would not the records of the Ordnance Department, in such a case, plainly lay open to him the facts and particulars? A. They would plainly lay open every fact and every particular.

Q. Please examine the printed congressional document now shown to you, and purporting to be a copy of the Report of the Colonel of Ordnance Department, of the 4th November last, and say whether it does not contain purchases made, not by the Bureau, but by the disbursing officers of the arsenal. A. It does contain such purchases, among which I notice particularly 27,054 cubic feet of timber, among the articles reported as procured by

purchase and fabrication at the arsenal, and in the report of the commander of the Watertown Arsenal, which accompanies the report of the Colonel of Ordnance, it is stated that 276 spherical case shot were inspected at contract establishments. It would 248 not follow necessarily that these spherical case shot were purchased by the commander of the arsenal. This officer is a contract inspector, and reports among his year's work the inspections he has made.

Q. If the order for shot and shells by Colonel Huger had been sanctioned by the Ordnance Department, and the order executed, would not the annual report of that department to the War Department, under the head of articles procured by purchase and fabrication, have necessarily shown that they were purchased and not fabricated? A. It would have shown that the shot had been procured by purchase or fabrication, and as the department 249 does not fabricate shot, it would necessarily have followed that they were purchased.

*Brevet Major Alfred Mordecai*, a witness on the part of the prosecution, being sworn in due form of law, testified as follows:

*Direct examination*, by Judge Advocate.

Q. Did you send any 32 pdr. shot guages to Mr. Anderson in January of this year? and if so, did you communicate the fact to the Colonel of Ordnance and procure an order for doing so? A. I did send two 32 pdr. shot guages to Mr. Anderson in January of this year. I sent them at the request of Colonel Huger, 250 conveyed to me in an unofficial letter; and to the best of my recollection, before sending them, being at the ordnance office, I mentioned to General Talcott that I had received such a letter from Colonel Huger, and that I presumed there would be no objection to sending the guages to Mr. Anderson, and I think that he replied, "No, I suppose not," or something of that kind. I will add that, attaching very little importance to the transaction, my recollection of the conversation with General Talcott on the subject is not very positive. I received no written authority, I know, for the issue of these guages to Mr. Anderson; such issues are generally made only on written orders from the Colonel of 251 Ordnance. These guages were issued to Mr. Anderson, but they were receipted for by Colonel Huger, to whom Mr. Anderson was told that they would be turned over when he was done with them, and consequently, in the statement of work done in the month of January, which was made to the Ordnance office early in February, (on the 3d I think,) the guages are reported as having been issued to Colonel Huger, and that is the only official report on the subject made by me to the Colonel of Ordnance.

Defence suggested to witness to state the date of the conversation with General Talcott. 252

To which he said, I can only fix it by reference to certain pa-

pers, after examining which, witness said, "It must have been between the 8th and 10th of January.

*Cross examination*, by defence.

- 253 Q. Was there any thing in the request of Colonel Huger, or in what you said to General Talcott, inconsistent with the supposition that the guages were required for making a few shot for experiments? A. On the contrary, that was my impression at the time that they were required for that purpose, and for that reason I attached so little importance to the matter.

And then the court adjourned to meet to-morrow, the 1st July, at 10 o'clock.

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10 o'clock, Tuesday, July 1st, 1851.

The court met pursuant to adjournment. Present, all the members, Judge Advocate and General Talcott.

The proceedings of yesterday were read over.

Thomas B. Barton, a witness on the part of the prosecution, being sworn in due form of law, testified as follows:

*Direct examination*, by Judge Advocate.

- Q. Will you state to the court where you reside, and your means of being acquainted with the partnership affairs of Wellford & Co., the proprietors of a foundry near Fredericksburg, Virginia? A. I reside in the town of Fredericksburg, Virginia; was the counsel of William N. Wellford, executor of John S. Wellford, who was the principal owner and partner of the Catharine Furnace company. In June, 1847, I was called upon by the executor, and by Messrs. Carmichael and Deane, (the two last owning  $\frac{1}{3}$ th each of the property of the company in the furnace,) to settle their transactions.

- Q. Will you state whether that foundry is in operation? if not, when it ceased? A. It is not, and ceased, to the best of my memory, between March and June, 1847, and has not been in operation since. In fact the parties endeavored to sell it, and there was a contract of sale, but the purchaser did not comply with the terms, and the property stands in the same hands; but Carmichael's interest is covered by deeds of trust to secure Wellford and other creditors far exceeding its value.

Q. Had Dr. Carmichael, to your knowledge, any other foundry, or any interest in any other foundry? A. Not to my knowledge.

Q. What was his *general reputation* for pecuniary solvency? A. He was not considered as solvent or in good circumstances.

257 *Cross examination*, by defence.

Q. Do you mean to be understood as saying that Doctor Carmichael's interest in the establishment has not been disposed of by him, otherwise than by the execution of two deeds of trust by way of mortgage to secure certain debts, and that those deeds

of trust have not been enforced by sale under them? *A.* Yes sir, I do mean that.

*Q.* Do you recollect the date of the first of those deeds of trust? *A.* I do not, I think it was in 1845, or perhaps before it.

*Q.* Was there any assignment, or deed of trust, or mortgage, upon the other shares or either of them? *A.* Francis B. Deane, had given a deed of trust on his share.

Captain William Maynadier, a witness for prosecution recalled.

The Judge Advocate said he had recalled the witness at this time, only to prove a paper; that this paper had only become known to him, and as he understood to the department, on yesterday; otherwise he should have made it known to the defence, with the other documentay proofs, which he had exhibited to 259 them before the trial. He would further state, that Col. Huger had also given him some information in regard to this letter on yesterday morning.

*Q.* Whose writing is this? *A.* This paper is in the handwriting of Col. Huger. I never saw it, never knew that it was on the files of the Ordnance Office, and never knew of its existence until yesterday morning.

The paper exhibited to the witness here read as follows, *by the witness.*

260

(Unofficial.)

FORT MONROE ARSENAL, }  
Nov. 5th, 1850. }

GENL. G. TALCOTT.

My dear Genl.—Dr. Carmichael has handed me your note of the 1st Nov.

The number of 32 pdr. guns intended to be mounted at this place is about 187. As it is probable that 8 in. Columbiads or Howitzers may be substituted for some of them we may suppose about 150 32 pdrs. would be mounted here, which for service 261 should be provided with shot, at 500 rounds each, this would require 62,000, from which deduct the number on hand 28,450, leaves 33,550, or nearly 500 tons. There is room to place these shot here, and they are in convenient position to be transported elsewhere if required. I would recommend not to procure any 42 pdr. shot as it is highly probable the 8 in. Columbiads will take the place of 42 pdr. guns.

Very respectfully and truly, yours,  
BENJ. HUGER.

Foregoing letter endorsed as follows:

262

C. B. HUGER,  
FORT MONROE ARSENAL,  
5th Nov. 1850.

States quantity of shot on hand and the additional quantity which could be stored at that port,

Received 6th Nov. 1850. *A.* 6th Nov.

Q. Look at the endorsements on that letter and say in whose hand-writing they are? *A.* All the endorsements except the last are in the hand of Mr. Jonas B. Keller, the registering Clerk of the Ordnance Bureau.

The last endorsement is in the hand-writing of Gen. Talcott.

Q. Does your office mode of making these endorsements show the date of the receipt of letters, and the date of the answer made to them. And does this letter show these dates? *A.* Yes, this letter shows in the hand-writing of the registering Clerk, that it was received on the 6th Nov. 1850, and in the hand-writing of Gen. Talcott, that it was answered 6th November.

264 Q. Does your record of letters show any answer to that letter? *A.* Our letter book shows but one letter dated 6th Nov. 1850, it is the letter on your record of that date, in regard to the purchase of shot.

Q. Where was this letter found, and where were you when it was received by your bureau? *A.* The letter was found in its regular place on the files of the office; I was absent from the bureau at the time it was received, as I have before stated.

Q. by defence. In your testimony heretofore given, you have read to the court certain regulations touching the purchase of supplies; will you look at the paper now shown you, purporting to limit from or after its date, the discretion of the Colonel of Ordnance in making such purchases, and say whether it is a true copy of an order of the Secretary of War, and when it was promulgated? *A.* I believe this to be a true copy of the order received from the Secretary of War on the day of its date, or a day or two after.

The order was read as follows:

QUARTER MASTER GENERAL,

COMMISSARY GENERAL,

COLONEL OF ORDNANCE.

The Quarter Master General, the Commissary General, and the Colonel of Ordnance, will not hereafter make or authorize any contracts for supplies, or for arms and munitions of war, to be furnished, or for services to be performed, to an amount exceeding two thousand dollars, without previously submitting such contracts or propositions to the Secretary of War.

C. M. CONRAD,

*Secretary of War.*

267 WAR DEPARTMENT, January 29th, 1851.

C. M. Conrad, Secretary of War, a witness for the prosecution, recalled.

*Direct examination by Judge Advocate:*

Q. Will you relate to the court what enquiries you made of General Talcott in regard to any contract for shot, after or before the interviews between yourself and Dr. Carmichael, and

what answers you received; be pleased to relate all that occurred?

A. Shortly after I took charge of the War Department, several applications were made to me by different persons for contracts 268 to make shot; these persons speaking for themselves, or in behalf of friends; among the first of those who applied, was Mr. Thomas Green, of this city, who spoke in behalf of some friend who owned a foundry in Virginia; I enquired of General Talcott (verbally, of course, as these things are usually done in the department) whether the department would be in want of shot during the current fiscal year, which terminated yesterday; General Talcott told me that the department did not want shot; that there was an ample supply on hand; I accordingly communicated that answer to Mr. Green, and I think to one or two others, telling them, however, that at another time if the department should be making shot, I would give them all a chance of sharing in the profits; some time after this conversation with Mr. Green, he came to the department and reminded me of what I had told him, but told me that I was mistaken in what I had said, that the department was not making shot this year, for that he had learnt that the Tredegar Iron Works had a large contract for shot for the War Department; I said it could not be so; but as he persisted that he could not be mistaken, I told him I would enquire into the subject, and let him know the result; on the same or 270 the next day, I sent for General Talcott, and informed him of what Mr Green had stated to me; he said that it was a mistake; that no contract existed for shot, and that none was making at Richmond for the department; I informed Mr. Green of this result of my enquiry, and supposing it was all a mistake, I dismissed the subject from my mind entirely; some time after this (I do not recollect the precise interval between the two visits), the same gentleman came again to the office and told me that he had positive information, of the truth of which he had no doubt, that a large quantity of shot was making at the Tredegar Works, in 271 Richmond, owned by Mr. J. R. Anderson, and that a considerable quantity was piled up in the foundry yard, or some where about the foundry; I endeavored to persuade him that it was a mistake, but as he seemed incredulous, I told him that I would have a written report upon the subject, which I would exhibit to him, and he would see that he was in error; I accordingly directed a note to Gen. Talcott; it was some time in January. A paper here exhibited to witness by Judge Advocate, on which he stated:

This note of the 20th January, 1851, is the note I allude to.

The paper here read as follows:

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*To the Colonel of Ordnance:*

The Secretary of War requests a statement of the expenditures made from the appropriations of the 28th of September last, for "armament of fortifications, and ordnance, ordnance stores and

supplies," and of existing contracts chargeable upon those appropriations.

WAR DEPARTMENT, January 20, 1851.

- 273 Witness resumed: To which I received the following answer. The answer here read as follows:

ORDNANCE DEPARTMENT,  
Washington, January 22d, 1851.

Hon. C. M. CONRAD, *Sec'y of War:*

Sir,—I respectfully submit herewith, the statement requested in the note from the War Department, dated 21st inst. It may be proper to remark farther in regard to the appropriations referred to, that the balances on hand 28th September, 1850, were sufficient to meet expenditures up to that time, and no deficiency was created. It is supposed that the balances now remaining, or the greater part of them, will be required during the present fiscal year for the current operations of the arsenals, repairs, preservation and addition to the armaments of forts, purchase of gun carriage timber and of supplies for the troops and posts.

Respectfully, your ob't serv't,

(By order.)

W. MAYNADIER,  
*Capt. of Ordnance.*

- 275 In the foregoing letter was enclosed the following statement:

*Statement of expenditures from the appropriations for "armament of fortifications, and ordnance, ordnance stores and supplies," since the last appropriations on the 28th September, 1850, and of existing contracts chargeable upon these appropriations.*

	Armaments of Fortifications.	Ordnance, Ord- nance Stores, and Supplies.
276 Expended since 28th September, 1850,.....	\$26,378·62	\$54,416·76
Amount of contracts chargeable,.....	31,417·00*	21,230·00†
	\$57,795	\$75,646·76

(By order.)

W. MAYNADIER,  
*Capt. of Ordnance.*

ORDNANCE DEPARTMENT, Jan. 22d, 1851.

Witness resumed:

I then asked for more explicit information, and this memorandum was sent up.

\*Sixty-five 22-pounder iron cannon, ordered and to be delivered, \$31,417.

<sup>†</sup>Nine hundred and fifty officers' swords, eight 32-pounder bronze howitzers, and spare parts for repairs of carbines and pistols, ordered and to be delivered, \$21,230.

The memorandum exhibited by witness then read as follows:

Amount of money due on ordnance and ordnance remaining to be delivered under existing engagements under the appropriations for "armament of fortifications," and "ordnance, ordnance stores and supplies," viz: 278

*Armament of Fortifications.*

Alger, 30 32 pdr. guns,.....	\$14,600
Freeman, Knapp & Totten, 30 32 pdr. ....	14,600
G. Kemble,.....	2,217
	<hr/>
	\$31,417

*Ordnance and Ordnance Stores.*

Ames, 950 officers' swords,.....	\$14,250	279
" 8 32 pdr. bronze howitzers,.....	6,100	
	<hr/>	
North, carbine parts,.....	\$20,350	
Aston, pistol " .....	401	
	<hr/>	
	479	
	<hr/>	
	\$21,230	

Witness resumed:

As that statement did not mention for what particular articles the sums mentioned had been paid, I sent down to the Ordnance Bureau this note, dated the 23d January. 280

The note here read as follows:

*To the Colonel of Ordnance:*

The Secretary of War requests that the principal items be stated, making up the sums of \$26,378·62, from "armament of fortifications," and \$54,416·76, from "ordnance, ordnance stores, &c.," expended since the 30th of September last, and the names of persons to whom the principal payments were made.

WAR DEPARTMENT, Jan'y 23d, 1851.

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Witness resumed:

In answer to which this statement was sent to me.

The statement here read as follows:

ORDNANCE DEPARTMENT, }  
Washington, January 23d, 1851. }

Hon. C. M. CONRAD, *Secretary of War:*

Sir,—In answer to the note from the War Department of this date, I have to state that the expenditures from the appropriations for "armament of fortifications," and "ordnance, ordnance stores and supplies," since the 30th September last, were for the following items, viz: 282

For the current service of the arsenals, consisting of wages to  
hired men employed in making gun carriages, purchases of iron,  
timber, paints, and other materials required for the manufacture  
283 of gun carriages, implements and equipments for forts, and re-  
pairing carriages, &c., mounted thereat—paid to various persons  
in small sums:

*Armaments of Forts.*

	\$11,773·26
Paid Joseph R. Anderson, proprietor of the Tredegar Iron Works, Richmond, Virginia, for 30 32 pounder iron guns,.....	14,605·36
Total,.....	\$26,378·62

284 For the current service of the arsenals, consisting of wages to  
hired men employed in the manufacture of siege and field car-  
riages, implements and equipments, and the purchase of materials  
for making these carriages, implements, equipments, and harness;  
of accoutrements for the troops and repairing arms, carriages, &c.;  
of materials for, and the preparation of field and siege ammunition,  
and for altering flint lock muskets to percussion—paid to various  
persons in small sums:

*Ordnance, Ordnance Stores and Supplies.*

<i>At fifteen arsenals and two armories,.....</i>	\$49,937·04
285 To C. Alger & Co., of Boston, for 24 12-pounder bronze mountain howitzers,.....	3,982·12
To L. North, of Middletown, Conn., for parts for repairs of carbines,.....	401·80
To H. Aston, of Middletown, Conn., for parts for repairs of pistols,.....	95·80
Total,.....	\$54,416·76

Respectfully, your ob't serv't,

286 G. TALCOTT,  
*Bt. Brig. Gen'l, Col. of Ordnance.*

The witness continued:

As the words, paid to various persons, in small sums, at fifteen arsenals and two armories, were used in connection with the large sum of \$49,937, &c., I determined to make a more direct enquiry in relation to shot, and accordingly sent to the Ordnance Bureau, on the 27th January, the note of which this is a copy.

The paper exhibited by witness here read as follows:

287 The Secretary of War requests to be informed what contracts have been made for *shot* from the last appropriations; how much has been furnished and how much yet to be furnished, and whether any further contracts are contemplated.

WAR OFFICE, *January 27th, 1851.*

To which I received this answer. The paper here exhibited by witness read as follows:

ORDNANCE DEPARTMENT,  
Washington, January 27th, 1851. }

HON. C. M. CONRAD, Secretary of War:

Sir,—In answer to the note from the War Department of this date, I have to report, that no contract has been made for shot by this department, from the last appropriations; no shot have been furnished. There are no contracts for shot made by this department unfulfilled, and none are now contemplated.

Supposing that the inquiry may have reference to a letter officially addressed to Bt. Col. Huger, on the 6th November, 1850, I deem it not improper to send you a copy of that letter, although not specifically called for by your note. Col. Huger's estimate for the present quarter, the only one received from him since the above date, contains nothing for the purchase of shot.

Respectfully your ob't serv't, 289

G. TALCOTT,  
*Bt. Brig. Genl., Col. of Ordnance.*

*(Copy.)*

ORDNANCE DEPARTMENT,  
Washington, 6th November, 1850. }

COL. B. HUGER, *Fort Monroe Arsenal:*

Sir,—It may be well to provide more shot and shells from time to time for the post of Fort Monroe, and for this purpose you are authorized to procure them to a reasonable extent if, as I suppose, (the price of iron being now so low) they can be had on favorable terms. You will make the necessary estimates of funds to meet the deliveries as they occur; they should be procured by open purchase only.

I am, Sir, respectfully, your ob't serv't,

G. TALCOTT,  
*Bt. Brig. Genl., Col. of Ordnance,*

NOTE.—Since the above was written, a quantity of shot has been taken from Fort Monroe for the supply of guns sent to California, the vessel being laden at that fort. Supplies for the more southern forts are also frequently sent from Fort Monroe.

Witness continued—This answer being perfectly satisfactory, I ceased to think on the subject until my attention was again called to it a short time after, by Mr. Green again mentioning that shot were making at the works at Richmond, when it occurred to me that possibly Col. Huger might be making shot under that order of the 6th November. I either sent for General Talcott, or he came on other business to my office, I forget which, when I mentioned this subject to him, and asked him what was meant by that order, 291 whether it might not be construed to authorize the making of shot, and what he meant by it. He told me no, that could not be so;

that all the shot that could be needed at the Monroe Arsenal were occasionally a few shot or shells for artillery practice and experiments; that sometimes a shot or shell, of a description of which there was none on hand, was required in their experiments and 293 practice, and that the object of this letter was to authorize the commander of the arsenal to purchase them as they were needed; that it was possible Col. Huger might have ordered something of this kind, but that it must of course be a very inconsiderable quantity.

The next interview that I recollect having on this subject, was a very considerable time after the last conversation, when Mr. Green came again to the office, about the 3d or 4th of April, and informed me that a large quantity of shot had actually been sent down to the Monroe Arsenal from the Tredegar Works, in 294 Richmond. He asserted this so positively, and stated that he had received the information from a person who spoke from personal knowledge, and of whose veracity he could entertain no doubt whatever; that I began to suspect that there must be some mistake in this matter, and I told Mr. Green to make a statement in writing, and that I was determined to investigate the matter fully. He told me he would do so, and a day or two afterwards he sent me this letter. Several days intervened after I received the letter, before I could deliver it to General Talcott. I think a Sunday intervened, and one day, I think he was attending the funeral 295 of a naval officer, at all events several days elapsed, when I sent for him to come to the office. I commenced by reminding him of our previous conversations on the subject of these shot that were said to be making at the Tredegar Iron Works in Richmond, and asked him whether he had heard any thing more on that subject since we last conversed on it. He said he had not. I told him "I have received a letter from Mr. Green, a few days ago, which I would beg leave to read to you." I read to him Mr. Green's letter from beginning to end. The letter here read as follows:

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WASHINGTON, 5th April, 1851.

HON. C. M. CONRAD, *Secretary of War.*

Sir,—During the last summer and autumn, I presented the application of my friend, Mr. F. B. Deane, of Lynchburgh, Va., to make shot and shell for your department; Mr. Deane had executed such work to the satisfaction of your predecessor, and also of the Navy Department; the reports to the latter will that his work has been done as well as at any foundry in the Union. He has done more to develop and establish the iron interests of Va., than any man in it. But the convulsions of 1837-8 and 9, 297 overwhelmed him so far as to force the sacrifice of his heavy interests in the great Tredegar Iron Works at Richmond, and his successors reaped the profits which his genius had foreseen when he planned and built up the establishment. Crushed almost, but not subdued by adversity, his energy and the confidence of

his friends enabled him to establish a new foundry at Lynchburgh, in the vicinity of the best iron ore of the state. The departments gave him work to do, the profits of which were all 298 applied in settlement, without discount or composition, of his old debts. But for some reason wholly unknown to him, the encouraging countenance of the War Department was divested from him, without the least complaint as to the execution of the work, while his opulent rival owning the Tredegar Works (which he had erected and been compelled to sacrifice), has directly and indirectly had almost constant employment for that department, as I am informed. Mr Deane's time not being constantly occupied in doing the work for the Navy Department, he undertook a new enterprise, which seemed almost chimerical, and subjected 299 him to the ridicule of some of his friends; the building of the Virginia and Tennessee Railroad. Like Peter the hermit, he went through the long tier of southwestern countries, and finally awakened such an interest and exerted such influence in the Legislature and among the people, as to overcome all obstacles, and in one year after this, the whole line will probably be finished from Lynchburg to Tennessee To Mr. Dean's energy, by common consent, the country is more indebted than to any dozen others for this great work. Such a man, poor, intelligent, honorable and enterprising, ought to be sustained, when it can be 300 done fairly, quietly, and without injury to the public interests.

These views heretofore presented by Members of Congress, who pressed his application upon you for work, induced you to say he should have a fair proportion of such as the department required. I beg leave most respectfully to suggest that fair proportion would be an amount equal to that which the Tredegar Works (the rival in making shot and shell) has been authorized, since your kind promise was given, to execute for the department. I do not say any contract has been made between the department and Mr. Anderson of the Tredegar Works, since 301 your promise to us, but I am authorized to say, the Tredegar Iron Works have been engaged, and are now engaged in executing a large amount of work for the delivery of shot and shell to the department. Whatever authority for doing this work exists, was probably given by the department or its officers to Dr. Ed. H. Carmichael, recently a resident of Richmond, but now of the city of New Orleans. During a recent visit to Richmond, I was informed the work was done by Mr. Anderson, under an assignment from Dr. Carmichael. I beg to be understood as making no complaint at your department's giving the employment to Mr. 302 Anderson; I think it is right to give a large proportion, if not all to southern foundries, for some years to come, as from the foundation of the governmnnt such a vastly disproportionate amount has been given to the north. But if you will pardon the expression, I do say, after the promise made by the head of the department, Mr. Deane has a just expectation of receiving an

order for a like amount of work as that which Mr. Anderson has obtained. No matter who gave the order, the work is done *for* 302 *the government*, and a large amount of shot has recently been delivered at Old Point Comfort by Mr. Anderson. If you will direct an order to be given to Mr. Deane for a like amount of shot and shell as that which is authorized by the order under which Mr. Anderson is working, Mr. Deane will be satisfied, and if the work is not as well done, he will abide the penalty.

I am yours, most respectfully,

THOMAS GREEN.

Witness resumed—When I had finished reading the letter, I 303 said to Genl. Talcott, “General, what do you say to that”? He answered, I say that there is not a word of truth in it. It is all a humbug from beginning to end; with great emphasis. He spoke very emphatically, and apparently with some displeasure. I said to him, General, there must be some mistake in the matter. People cannot fancy that they see shot piled up in a foundry yard, or that they see it laden on board a vessel, and they could have no motive for fabricating such a story, and there must be some truth in it, some foundation for it. He reiterated his assertion, that there was no truth in it, that there was no foundation for it. I endeavored to create doubts in his mind and labored to show how improbable it was that such things could be invented; that this thing came direct from Richmond; that Mr. Green told me that the person from whom he had the information, was a person of undoubted respectability, and that he would be willing to testify in the matter if necessary. He still insisted, however, that the story was without foundation. I then said, “Then General, you must make a report to me on this subject.” He answered, “I make my report now, what further report do you want? I told him I wanted a formal report in writing. He said, with some impatience. “If I was to make a dozen reports, I could only report what I now say, that there is not a word of truth in it. I replied, nevertheless, General, I must have a report in writing on this letter, at the same time, extending to him the letter which I held in my hand. He said, I should have a report in writing, and left the room. This was about the 10th of April. Two or three days afterwards, he came to the office, accompanied by a gentleman, whom he introduced to me as Mr. Anderson of Richmond, Virginia. He observed as soon as he entered, Mr. Anderson is the owner of the Tredegar Works, and I have brought him to 305 you to explain that matter of the shot. I instantly replied, General, I want no explanation on that subject from Mr. Anderson, whatever explanation is given must come from yourself. He said that as Mr. Anderson was the gentleman who was making the shot, and knew all about it, he thought he could best explain it. I observed, then there is shot making. He answered, it seems so. I answered, well then, General, I will receive no

explanations on that subject from any one but yourself. I have directed you to make a written report on that subject, and I will accept no substitute for it. He said he did not offer it as a substitute, but he thought I would like to hear Mr. Anderson's statement. I said Mr. Anderson could make his statement in writing, Mr. Anderson then spoke, and said it was hard he could not be heard on a subject in which he had a pecuniary interest; I replied that he had no interest in this question; that if he had any claim against the department, he had only to present it, and it would be considered and decided. But the present question was one between the head of the department, and one of its officers. It was a question whether an order of the department had been disobeyed, whether or not false reports had been made to the department by one of its officers; and that was a question which did not concern him. He said he had acted in good faith, had executed part of the work, and had made his preparations to execute the remainder, had delivered part of the shot, and that he should not suffer for the faults of others. I told him this was not the time for that enquiry, and refused to converse with him on the subject. In the course of conversation he mentioned that he had executed the work, under an order given by Col. Huger to Dr. Carmichael. Gen. Talcott left the room first, and as he was about to retire, I said to him, "General you will please direct Col. Huger to receive no more shot or shells. He answered, "it was hardly necessary, he took it for granted he would receive no more." I told him, General, you have taken too much for granted, already, in this matter. You took it for granted that no contract existed, when you were informed to the contrary; you took it for granted that no shot had been made; and that no shot had been delivered; when you were informed that there had been. Now I beg of you to take no more for granted, but to issue the order. He said he would do so, and left the room. This is as well as I can recollect it, the purport of the conversation that took place.

Some five or six, or may be ten days afterwards, he made me his report.

*Judge Advocate*—Is this it?

*Witness*—Yes this is the report; the date is the 19th of April.

The report here exhibited to witness with its enclosures, read as follows:

ORDNANCE DEPARTMENT, }  
                                 Washington, April 19th, 1851. }

HON. C. M. CONRAD, *Secretary of War*:

Sir,—On the subject of Mr. Thomas Green's letter of the 5th instant, referred by you to this office, I have to report, that the facts in regard to the work stated to be now under execution by Mr. J. R. Anderson, for this department, will be found explained in the enclosed copy of a letter from this office to Brevet Colonel Huger, dated 6th November, 1850, and the accompanying letters

from Brevet Colonel Huger and Mr. J. R. Anderson, dated 17th April, 1851.

- 312 My letter of the 6th November is the only authority given by me for procuring the shot and shells for this department; it contemplated, as it clearly expresses, the purchase in open market, to a reasonable extent, of such quantity of these articles as might be required for the post of Fort Monroe. Colonel Huger's letter states his reasons for giving the order dated November 8th, 1851, to Doctor Carmichael, which order, it appears, was not executed as the doctor had induced Colonel Huger to believe it would be, but was transferred to Mr. J. R. Anderson, as explained in the letter of that gentleman.

The quantity of shot and shells ordered by Colonel Huger, five hundred tons, is more than the department is, in my opinion, in immediate want of; but as they will be required sooner or later, and are imperishable articles, no loss can result from providing them in anticipation of need for their actual use. With this supply I do not think it would be advisable, so far as regards the present wants of the service, to give any further orders for shot or shells, unless it may be to fill requisitions (should any be made) for such kinds and calibres as may not be on hand. It is not probable that any such requisitions will be made, although it is possible; but they can not require purchases save to a very limited extent.

- 314 Mr. Green's letter is returned herewith.

I have the honor to be, sir,

Your obedient servant,

GEN. TALCOTT,

*Bt. Brig. and Col. of Ordnance.*

Enclosed in the foregoing report, the two letters which here follow:

FORT MONROE ARSENAL, }  
April 17th, 1851. }

- 315 BR. GEN'L GEO. TALCOTT, *Ordnance Department:*

Sir,—In reply to your letter of the 11th instant, I have to state that, on the receipt of your letter of the 6th November, '50, I gave to Dr. Edward Carmichael an order to furnish shot, &c., for this post, a copy of which order is herewith enclosed, dated 8th November, 1850. I should, perhaps, explain that Dr. Carmichael had been engaged with Mr. J. L. Wellford in supplying shot and shells from a foundry near Fredericksburg, Va., and they had furnished them of very good quality. The foundry was a small one I knew, and expected it would take several years to complete the order, and they could be paid for on limited annual estimates. Dr. C. induced me to believe the work was to be done at that foundry. As the work was to be inspected here, I knew he would be compelled to execute it faithfully, and I con-

sidered the price reasonable, and it would be an advantageous arrangement for the department. The quantity would not give to guns required for this post alone one-half the number of 317 rounds required for each piece in service. (See Ordnance Manual, page 337.)

It seems Dr. Carmichael, did not execute the order at the foundry at which he induced me to believe he would, but transferred it to Mr. J. R. Anderson, of Richmond. Mr. Anderson has sent to this post an account of Dr. Carmichael, 5,070 32 pdr. shot.

I send also enclosed an order of mine to J. R. Anderson to furnish spherical case instead of shot, and an order from Major Laidley to him for some special shells for experiments. These 318 are all the orders that have been given to him.

I remain, very respectfully,

Your obedient servant,

BENJ. HUGER, *Bt. Colonel.*

NOTE.—In the foregoing report from General Talcott were also enclosed copies of his order of the 6th November, 1850, to Colonel Huger, and of Colonel Huger's order for shot to Dr. Carmichael dated the 8th November, both of which are heretofore recorded on this record, and therefore omitted here.

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TREDEGAR IRON WORKS,  
Richmond, April 17th, 1851. }

GENERAL G. TALCOTT,

*Ordnance Department, Washington City:*

Sir,—Your letter of 10th was received in my absence. Some time in November last Dr. E. H. Carmichael called at my office and stated that he had agreed to furnish the War Department at Fort Monroe five hundred tons of 32 pdr. shot, with a conditional contract for five hundred tons more of shot and shells, and having made up his mind to remove to New Orleans, he wished to 320 get me to perform his contract for him.

We entered into an arrangement under which he gave me a power of attorney, which I forwarded to Colonel Huger, whose order he turned over to me, and a copy of which order has been furnished the department; and it may not be amiss to add that I advanced to the doctor as much as it was estimated he could realize from the work. I am not able to state how much of the work has been done. But I have contracted with moulders to do the whole and purchased the iron for it, and have probably completed about three-fifths of the quantity, or near it. 321

I have the honor to be,

Your most obedient servant,

J. R. ANDERSON.

The witness resumed—Not being satisfied with this report, I wrote to Colonel Huger to repair to Washington. He did so,

and came to the department. I conversed with him on the subject and reduced his statement to writing in his presence as it 322 was delivered, and he signed it. After taking Colonel Huger's statement in writing, I sent a copy of it to General Talcott, enclosed in a letter from myself to him, in which I called his attention to the various verbal and written reports which he had made to me on this subject, and which appeared to me at variance with his present report and with the statement of Colonel Huger, and requested that he would furnish any explanations, or additional testimony that he might consider necessary.

*Judge Advocate*—Is this his answer?

*Witness*—Yes, this is his report in answer to my letter.

*Judge Advocate*—I now offer the report of General Talcott to 323 which the witness testifies, and the letter from the War Department to which it is in answer, and read them in the order of their dates.

*W. D., Washington, May 1, 1851.*

Sir,—I have read with attention your report on the letter of Mr. Thomas Green, referred to you some time since.

Early last fall, (several applications having been made to me for orders to make shot and shells,) I sent for you and asked you whether the department needed a supply of those articles. These 324 inquiries you always answered in the negative.

Some time in January last I was informed that the proprietors of certain iron works in Richmond had, or were supposed to have, a contract with the department to make shot and shells. On my questioning you on this subject, you told me that it was an error; that no such contract existed. A few days afterwards you were directed to furnish a statement of the expenditures made from appropriations for the current year for "armament of fortifications," and for "ordnance, ordnance stores and supplies," and of "existing contracts chargeable upon these appropriations." This 325 statement was furnished. In your letter transmitting the same, dated January 27th, 1851, you state that "no contract has been made for shot by this department from the last appropriations; no shot have been furnished; there are no contracts for shot made by this department unfulfilled, and none are now contemplated."

In the same letter you furnished the department with a copy of your letter of the 6th November to Col. Huger. In a conversation with you on the subject of this letter, you stated its object was to enable the commander of the arsenal, at Fort Monroe, to purchase shot and shells in small quantities as were required, 326 from time to time, for experiments and artillery practice.

At a later period, I think some time in February, or perhaps early in March, I was informed that a large quantity of shot were being made for this department at the Tredegar Works in Richmond, and that a portion had been already made and piled up at the foundry. I again informed you of what I had heard, and told

you that my information came from a source that left little room to doubt of its correctness. I am not sure, indeed, that I did not mention the name of the person who had communicated this intelligence to me, to wit, Mr. Thomas Green of this city. You assured me, however, that there was not the slightest foundation for the story, and although the circumstance struck me as very singular, you were so positive in your denial of the fact, and spoke with such entire confidence that I could not doubt the correctness of what you said, and accordingly, when Mr. Green called again to see me on the subject, I told him that he had been misinformed. He still insisted, however, that the facts were as he had stated, and that I would ultimately find out he was correct. After a lapse of several weeks, Mr. Green again came to the department, and not only repeated what he had previously asserted, but added that a large quantity of shot had actually been sent down to the arsenal at Fort Monroe, from the Tredegar Works. I requested him to make the statement in writing, as I was determined that the matter should be fully investigated. He promised to do so, and a day or two after I received his letter of the 5th instant. I sent for you, and read this letter to you; after I had read it through, I asked you "What do you say to this, General?" Your reply was, "that there was not a word of truth in it; that it was false from beginning to end," or words to that effect. I again and again questioned you closely on this subject; suggested how improbable it was that such a story should be fabricated; that there must be some mistake in the matter. You persisted, however, in positively affirming that the whole story was false; that no shot was making or had been made, and no contract entered into for making them. I concluded by directing you to submit a report to me on the subject.

You said "I have already made my report; I make it now. What further report do you want." I insisted, however, on your submitting a formal report in writing, and you said you would do so.

A day or two after this conversation, you entered my office, accompanied by a gentleman, whom you introduced as Mr. Anderson, of Richmond. As soon as you were seated, you told me that Mr. Anderson was the owner of the Tredegar Iron Works, at Richmond, Virginia, and that you had brought him in order that he might explain to me that matter of the shot. I told you that I did not wish explanations from Mr. Anderson, but from *you*, and I must decline receiving any from him. You answered, that "as Mr. Anderson was the person with whom the contract was made, you had supposed he could explain it better than you could," or words to that effect. This was the first intimation I had received from you that any such contract had been made. I expressed some surprise at this, and added that I would hear no explanation on that subject from Mr. Anderson, or from any one except yourself; that what I had asked for was a report in writing

from *you*, and that I would accept nothing as a substitute for that report. You replied that I should have a report. Mr. Anderson 332 then remarked that it was hard that he should not be permitted to offer explanations in a matter in which he had a personal interest, and went on to say that he made the shot under a contract entered into in good faith on his part; that he had made all his arrangements to fulfill it; had made and actually delivered a portion of the shot, &c. &c. I replied that if he had any claims arising out of any contract made with the department, he could present them and they should be promptly considered; and he might then offer all the explanations he deemed proper; but that no such claim was now before me, the question now was simply 333 whether an order of the department had been obeyed by its officers; whether reports made to it by one of its officers were false or correct; and this was a matter with which he had nothing to do.

You then rose to leave the room; as you did so, I observed, "General, you will immediately issue an order to Colonel Huger to receive no more shot or shells until further orders from the department."

You answered, "that was hardly necessary, you took it for granted that no more would be received." I immediately answered, "No sir; you have already taken too much for granted 334 in this matter; you took it for granted that no contract had been made; you took it for granted that no shot had been made or delivered after you had been positively assured of the contrary. Now henceforward, I wish you to take nothing for granted, but to issue a positive order to Colonel Huger to receive no more shot." You said it should be done, and left the office. Mr. Anderson remained for a few moments longer in the office, and again attempted to offer explanations; but I requested him to submit what he had to say in writing. In the course of his remarks, however, he mentioned that the contract under which he had made the shot, was made by Dr. Carmichael with Colonel Huger. A few days afterwards, your report on Mr. Green's letter was submitted. I was surprised. I was surprised to find, however, 335 that no explanation was offered of the fact, that the report now made by you was entirely inconsistent with your letter of the 27th January last, and with the verbal reports which you had over and over again made to me. I determined to seek elsewhere for this explanation. I accordingly directed Colonel Huger to repair forthwith to the department; he did so, and made a statement, a copy of which is herewith communicated. From this statement, it would seem that you were apprised of the order to Carmichael 336 to make five hundred tons of shot, a few days after it was given, and that you approved of it; and that you were also informed that the order had been assigned or its execution entrusted to Mr. Anderson, of the Tredegar works. It seems too, that the contract with Carmichael was made a few days after I had positively

refused, in your presence, to make one with him, or to recognize a verbal one which he said had been entered into between him and a previous head of the department.

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I would be happy to receive any explanations or any additional evidence you may wish to offer in relation to this matter.

Very respectfully, your ob't serv't,

C. M. CONRAD,  
*Secretary of War.*

Bt. Brig. Gen'l GEO. TALCOTT.

Statement of Colonel Huger in relation to a quantity of shot and shells said to have been made by Mr. Joseph R. Anderson, of Richmond, Virginia, under a contract made by him with Capt. 338 Huger.

Witness says: That on the 8th November last, Dr. Carmichael of Virginia, came to the arsenal at Fort Monroe, whereof he, witness, was in command, from Washington, and delivered to witness a letter, dated the 6th of that month, from General Talcott, authorizing witness to purchase shot and shells; of which letter a copy is enclosed in witness's letter to the head of the Ordnance Bureau, dated 17th inst. Whereupon, witness immediately gave to said Carmichael the order, whereof a copy is also enclosed in said letter.

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A few days after said order was given, witness came to this city and informed General Talcott of the order he had given Carmichael; does not recollect that General Talcott said anything in particular when he communicated the fact to him; while witness was in this city, he received a letter from Captain Stone (whom he had left in command of the arsenal), in which Captain S. informed witness that he had just received a letter from Mr. Anderson, of Richmond, enclosing a power of attorney from Carmichael to him (Anderson), authorizing him to execute the order for him, Carmichael; Capt. Stone desired to be instructed what course to adopt in the matter; witness directed Capt. S. to return the power of attorney to Mr. Anderson, and inform him that he considered the power of attorney, as in substance, an assignment of the order, and that Mr. Carmichael had no right to make such a transfer, and that he, witness, would not recognize it; thinks Mr. Anderson subsequently wrote him one, or perhaps two letters, in which he claimed the right to fill the order; witness, however, persisted in denying his right to do so, and advised him to settle the matter with the department before he made any shot or shells;; this occurred towards the end of November; witness, before leaving the city and returning to the arsenal, informed General Talcott of the letter he had received from Captain Stone, and of his answer thereto; General Talcott did not make any particular remark, but seemed to approve of his (witness) course in the matter; nothing further occurred until some time in February, when a quantity of 32 pound shot

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were sent down to the arsenal by Mr. Anderson; witness did not receive the shot, but allowed them to be landed, and had them piled up; he did not in so doing, intend to admit the right of Anderson to execute the order to Carmichael, but thought it was a doubtful matter, and that he would leave it to be settled with the department; he gave no receipt for the shot; did not enter 342 them upon the books of the arsenals; no money was asked for, and no estimates made by him (witness) with a view to payment of them; the practice at the arsenal had always been to prepare such estimates, and to pay for munitions of war, as fast as they were delivered; witness left the arsenal on leave of absence towards the latter part of February, and did not return there until a few days ago; on his return he found the letter from the head of the bureau of the 11th inst., directing him to make a report on this subject, and in preparing to execute this order, learned for the first time, that during his absence more shot had been sent down to the arsenal by Mr. Anderson; they had been landed and stored away, but no receipt had been given for them; 343 they had not been entered on the books; no estimates prepared, no money demanded or paid; witness omitted to state, that some time before Mr. Anderson sent down to him the power of attorney above referred to, he received a letter from Mr. Kemble, of the West Point foundry, wishing to know whether the order given by witness to Carmichael could be transferred, and witness replied that it could not be transferred; witness says he had previously on other occasions received authority from the head of the bureau to order small quantities of munitions of war, but had never been 344 authorized to purchase a large quantity until the letter of the 6th Nov. was sent to him; being asked what he understood to be meant by the order to purchase the shot and shells only "in open market," says that he understood by that simply that he should purchase them on as reasonable terms as he could procure them; he never communicated to General Talcott *officially* the order he had given to Carmichael; he informed him of it, however, privately, as above stated; does not recollect whether Gen. Talcott was informed that shot had been sent to the arsenal by Anderson under the order given to Carmichael; says he was pretty certain 345 he was not informed of it; does not know whether a copy of the order of this department of the 29th January last, prohibiting the different heads of bureaus from making contracts for sums exceeding \$2,000, was ever sent to the arsenal; has no recollection of ever having seen it; it may, however, have been sent down during his absence; a few days ago, witness received a letter from Mr. Anderson, requesting him to make estimates for the shot he had delivered; this letter was dated at Washington; it did not mention that he, Anderson, had had an interview with the Secretary of War, and that an order had been issued by the 346 department to witness to receive no shot under the contract with Carmichael; witness did not answer the letter immediately, and

a few days afterwards an order from the department was received, directing him, witness, not to receive any shot or shells from any foundry or manufacture; witness then sent Mr. Anderson a copy of this order as an answer to his letter; if witness had not received the order, he would not have estimated for the payment of the shot, but would have referred him to the department.

*2nd Examination.*

April 25th, 1851.

Witness produced a letter from Capt. Stone to himself referred to in his deposition, marked A, and extract from answer made by Stone to Anderson's letter to him marked B, also letter from Anderson to witness, dated Richmond, December 10th, 1850, a copy of which is retained, marked C, also a letter from Gouverneur Kemble to witness, marked D, answer of witness, marked E, and reply of Kemble, marked F.

Witness made the contract with Carmichael on the day he came to the arsenal. The details were arranged between Carmichael and Capt. Stone. Witness being indisposed. Did not make proposals to receive them from any one else. Considered the price agreed to be paid for them, low. Being asked if he knew of any reason why Carmichael should go right from the department with a letter from the chief of the bureau authorizing him to make the contract instead of making it here with the head of the bureau himself, says he knows of no reason, never thought any thing about it.

It was distinctly understood, when the order was given to Carmichael that the shot and shells should be made at the foundry at Fredericksburg, owned by Carmichael and a man by the name of Wellford. Witness had tried the shot and shells made at that foundry and they proved of excellent quality. This was his reason for desiring them to be made there, and Carmichael stated as his reason for being anxious to get the order that he desired to put the foundry, (which had been suspended for some time past,) once more in operation.

He considers that Carmichael practiced a gross deception in attempting to transfer the order to any other foundry.

BENJ. HUGER,  
*Bt. Col.*

(A.)

FORT MONROE, Nov. 22nd, 1850.

My dear Col.—I enclose you a treasury draft with the necessary papers to sign.

This morning brought me a letter from Mr. Anderson enclosing a power of Attorney from Dr. Carmichael for making the shot ordered at Wellford foundry! Is not that a beautiful operation for the Doctor? He said most expressly that he wanted the contract for the sole purpose of starting the foundry: and now

he has turned the whole order over to the Tredegar Works. Shall I put the power of Attorney on file and send up the guages as Anderson requested? I have been firing this morning, and the results, &c. xx experiments with spherical case shot.

(Signed,) Yours,  
C. P. STONE,  
*Bt. Captain.*

(B.)

FORT MONROE ARSENAL,  
November 26th, 1850.

J. R. ANDERSON, ESQ., *Richmond.*

353 I am instructed by Col. Huger now in Washington, to return you the power of Attorney issued to you by Dr. E. Carmichael and to say that he (Col. H.) thinks Dr. C. had, under the circumstances, no right to transfer his order for shot without first consulting him and obtaining his consent. \* \* \*

(Signed.) Yours &c.  
C. P. STONE,  
*Bt. Capt. Ordnance.*

(C.)

(*Private.*)

C. P. STONE,  
*Bt. Capt.*

C. F. STONE,  
Bt. Capt. Ordnance.

## Mr. T. P. Standish.

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RICHMOND, Dec. 10, 1850.

the 6th inst. was duly receiv-

to learn that Dr. C. has stat-

RICHMOND, Dec. 10, 1850.

354 My dear Col.—Your letter of the 6th inst. was duly received and I am very much astonished to learn that Dr. C. has stated what he did to you and the General about the place at which the shot were to be made.

I beg that you will allow me to make you acquainted with some circumstances, a simple narrative of which, without any comment, will I trust, fully justify my course in obtaining the control of the order and without waiting to communicate with you which I desired to do.

I was aware that Dr. C. had a claim on the government for a large contract for shot and shells, for he had brought the papers to me several months ago and solicited me to unite with him in promoting and prosecuting this claim, proposing that I should be equally interested in it. I unconditionally declined the proposition, being unwilling to connect myself or establishment with a claim for a contract which I believed to have been improperly promised. Still it appear to me, the faith of the government had been pledged, and I thought it quite likely that a succeeding administration, seeing the importance of preserving the credit of the government intact, would direct the contract to be given to him. His rights too, were sustained by high legal authority. Upon my declining his proposition, Dr. C. asked me if I would be willing if he succeeded, to have the work done for him at the "Tredegar Works" I replied unhesitatingly that I would. He

said that it would aid him very much, and asked me to put it in writing, which I did and gave him the paper.

When in Washington a few weeks ago, I met a friend who told 357 me that Dr. Carmichael had succeeded in getting his contract, and that he mentioned it to me because he was aware that I was to have the work done.

I returned home, and a day or two afterwards Dr. C. called at my office, handed me your order, and said he had but a few minutes to remain; that he had several offers for it, one of which he showed me, and that unless I agreed upon terms at once he would go north the next day to sell his contract.

I had reason to believe that he had represented to the department that I was to make the shot, and if not, I believed that you would be glad to have the order in the hands of a friend, instead of being hawked about to every blast furnace in the country; and above all, I felt naturally very desirous to have the work for my establishment, and I granted him such terms as were satisfactory to him, and made him an advance much heavier than I would under other circumstances have made, as I had known him long and his family well, and knew how greatly in want of funds he was; necessary to enable him to get to New Orleans.

Now knowing me well enough, I hope to feel that you lose nothing at least, by the order being executed by myself instead of Dr. C. I hope you will not hesitate to grant me every facility; 359 and I am certainly desirous of consulting your own convenience as to funds; I would like to deliver some 10 or 15,000 shot as soon as made, and I will afterwards confer with you as to the delivery of the others.

Please write me saying if I shall, and send me a pair of 32 pdr. guages.

Yours truly,

(Signed,) \_\_\_\_\_

J. R. ANDERSON.

As to the words of the power of attorney, I endeavored to make it agree with the order. I have the order among my papers, 360 however, and no doubt you have a copy of it, which will be all that is necessary for your guidance, as the power of attorney makes *no* transfer, but is merely a matter between the principal and agent, designed to show you that the power to sign his name is delegated to me as agent; it appears to me that the terms of it are not essential, except so far as they designate the order under which I am acting. I put the papers in this form, believing it would be more agreeable to you than a proposition to transfer the order or contract on your books. Officially or otherwise, you are not aware of any transfer or sale of the contract, and therefore, you may, to me as you did to Mr. Kemble, decline to assent to a transfer. But I do not ask for a transfer. I deliver the shot in the *name of Dr. Carmichael*, and settle for him in *his name*. Just in this way I filled an order Mr. Tucker had from the Bureau 361

of Ordnance, &c. I hope this will satisfy you. Please drop me a  
 362 line by return mail as to delivery of 10 or 15,000 shot and guages  
 Yours, J. R. ANDERSON.

*Endorsement.*—Ans'd Dec. 18. No doubt the matter can be managed if he will write to Gen'l T. or Maynadier; notify him I will want shells or S. C.; will write him hereafter.

(D.)

(*Private.*)

363 COLD SPRING, 17th Nov., 1850.

Dear Gen'l,—Dr. Carmichael, of Richmond, has written to me enclosing a copy of a letter from Col. Huger ordering 500 tons of 32 pdr. shot, deliverable at Old Point Comfort; offering the order to me for our execution and delivery according to the terms therein specified. Of course the Doctor is to take the lion's share of profits, but it would enable me to keep our moulders together during the winter, when the work of the department generally falls off; and therefore, if an arrangement by which the order should be transferred to me would meet the approbation of the department, I should try to make one with him.

364 I shall write to him to this effect, more particularly because there appears to be some irregularity in the transaction that I do not understand; and I would ask the favor of you to inform me as early as possible, whether there would be any objection on your part, and if not, how I had best manage with him, whether through a special power of attorney from him, or by transfer of the order in any other manner.

Very sincerely, yours,

GOUV. KEMBLE.

GEN'L TALCOTT, *Ordnance Department, Washington.*

365 Please direct to the care of }  
 William Kemble, New York. }

(E.)

WASHINGTON, November 21st, 1850.

My dear sir,—General Talcott has referred your letter of the 17th instant to me.

Neither General T. or myself consider the order to Doctor Carmichael for a supply of shot, assignable in the manner he proposes. Dr. Carmichael was interested in a foundry near Fredericksburg, Virginia, and supplies of shot and shells for Fort Monroe having heretofore been procured there. In giving him the order, a copy of which he sent you, it was understood that the work was to be done at that foundry, which could only turn them out in limited quantities as required, and as I had means to pay for them.

I was only authorized by General T. to estimate for funds to pay for them, from time to time, as I required them, and my stating the whole amount that would be required was for the purpose of letting the founder (Mr. Wellford, who Dr. C. told me would have charge of the works), make his arrangements for materials, &c., not that I expected him to deliver the whole amount immediately.

Under these circumstances I am not authorized to consent to the transfer of the order to Dr. C. in the manner he proposes.

I am, truly yours,

(Signed,) BENJ. HUGER.  
GOUV. KEMBLE, Esq.

(F.)

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COLD SPRING, 23d Nov., 1850.

Dear Col.—I have your letter of the 21st; there seemed to be something out of the way, that did not appear upon the face of this business with Carmichael, which caused me to enquire further before answering him directly; but your letter contains no stipulation in relation to the delivery, further than its taking place at Old Point, and I think, therefore, that it may cause you some trouble; for he is not bound to have the shot made at Fredericksburg or any where else in particular; besides, if I am not mistaken, Mr. Wellford is dead, and Dr. Carmichael has long since disposed of his interest in the foundry; let me know, therefore, the times of payment, and the amounts that would be convenient to you, and if I can arrange the affair with him I will, for it is better that this letter of yours, which is a positive order, should be in the hand of a friend.

Yours, faithfully,

GOUVENIR KEMBLE.

COL. HUGER, U. S. A., Washington.

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FORT MONROE, VIRGINIA, }  
November 23d, 1850. }

My dear Col.—Yours of the 21st is received. My impressions received from Dr. Carmichael's conversation certainly were that the shot were to be cast at Wellford's foundry, and that the very object of getting the order was the starting of the foundry with certain work for the first year. Indeed, he expressly stipulated that an allowance should be made in the price, for the transportation from Fredericksburg here, and an allowance was made for that transportation, of \$1·50 per ton—that is to say, the shot were rated at enough per lb. above the contract price, to cover the transportation at that rate. I recollect asking him too, if his foundry was not the old Wellford's, and getting a reply in the affirmative.

His turning over the order to Mr. Anderson without consulting

you, is exceedingly unfair; for I pointed out to him the shot and shells lately received from Richmond, and criticised them. If he had any idea of turning the order over to A., he ought in common honesty to have said so, and asked your consent.

I mentioned yesterday that I doubted the correctness of our conclusions against the capabilities of the 8-inch spherical cases, and this morning I have proved them wrong, as you will see from the enclosed table of this morning's firing. Four of the S. C. shot fired with the discharge of 3 lbs., were condemned on account of suspected weakness, and one of those fired with  $3\frac{1}{4}$  lbs. had been fired before. I shall test them more severely on Monday or Tuesday.

373 I am very glad the tige muskets are to be taken up. The pointed form of the tige is something new, since my visit to France. Do let them have a fair chance before the board, and do tell me where the one you have came from. Has General T. allowed some cit to bring up the thing before he took hold of it?

Laidley is here, but I have not yet seen him, (10 o'clock,) I shall go soon.

Mr. Anderson asked in his letter to have guages sent up immediately; I wrote him in reply that as I was very confident you had not intended the order to be transferred from Wellford's foundry, I must first receive your instructions.

What an outrage was that relieving Capt. B. from Fayetteville! Had he mixed actively in politics? And now that Dyer has been sent there, how much better off is Kingsbury by the change?

ORDNANCE DEPARTMENT, }  
Washington, May 3d, 1851. }

HON. C. M. CONRAD, *Secretary of War:*

Sir,—I have the honor to acknowledge the receipt of your letter of the 1st inst., with the accompanying papers; all of which I have attentively read and duly considered. A recapitulation of the facts connected with the subject of your letter, putting them with their dates in regular order, will be, I conceive, the most proper mode of replying. Their full exhibit will furnish an explanation satisfactory to me, and I trust to the Secretary of War also.

Dr. Carmichael, in the spring of 1850, claimed a promise of Ex-President Tyler, for a certain amount of castings to be given him to make by contract. His claim was not deemed valid by me. Secretary Crawford also rejected it, and in November last he was disposed to bring it again before the Secretary of War.

I accompanied him at his urgent request, and was present an 376 fully recognized the justice of the Secretary in its third rejection. It was not because I considered his claim valid, but because he really had no claim, that I gave him the paper addressed to Col. Huger, authorizing the latter to purchase, in open market, shot and shells to a reasonable extent, from time to time, thereby

giving Dr. Carmichael a chance to make a bargain, if he could, to furnish *some shot and shells*, which I had at that time an undoubted right to do, and if I was put on oath I should say that I supposed he would succeed in getting a small order. The paper to Col. Huger reads as follows:

"ORDNANCE DEPARTMENT,  
Washington, 6th November, 1850." } 378

"COL. B. HUGER, *Fort Monroe Arsenal*:

"Sir,—It may be well to provide more shot and shells, from time to time, for the post of Fort Monroe, and for this purpose you are authorized to procure them to a reasonable extent, if, as I suppose, (the price of iron being now so low) they can be had on favorable terms. You will make the necessary estimates of funds to meet the deliveries as they occur; they should be procured by open purchase only.

"I am, Sir, respectfully, &c.

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"G. TALCOTT,  
*Bt. Br. Genl., Col. Ordnance.*"

I heard nothing of the Doctor's success in the matter, until I received a letter from Mr. Kemble, dated 17th Nov., 1850, which is found appended to the statement of Col. Huger, marked D, addressed to *me*, and not to Col. Huger, as stated by the Secretary of War. Col. Huger had but just arrived here, and was acting as a member of the Board for the trial of small arms. The letter was either handed to Col. Huger or sent to him by me, and I desired him to reply to it, as I knew nothing of the matter. He 380 told me what he had done, and if I made no comment it was because I was astonished at the recital. He, however, replied to that letter as desired, and repudiated the conduct of Dr. Carmichael, and here I supposed the great contract which had been noised about, was ended. I have not the dates of my conversations with the Secretary of War, in relation to the wants of the department for shot and shells, but let the several times be when they may, the answers were correct and true in relation to contracts or large supplies. He never told me that he wished to give any man a contract, and when I heard that Carmichael had 381 one for furnishing 500 tons, I scouted the idea, taking for granted that no officer of my corps could so misconstrue authority to make "open purchases" of shot, or could convert my letter of the 6th November into authority to give such an order.

It may not be out of place here to state that a copy of the War Department order of the 29th January, 1851, was not sent to Col. Huger, because it is only directed to and contains instructions for the government of the heads of the Quarter Master General's, the Subsistence and the Ordnance Department. It may have been an error in me to take Mr. Anderson to the Secretary 382 of War on the subject of his own doings, but I had just received the letter of T. Green, with directions to report, which I could

not do until I heard from Col. Huger, who had gone to South Carolina on leave, and his return had not been reported. A  
 383 derson happened here by accident, and told me all that had been done, and from him I first heard that shot had been delivered. I simply supposed the Secretary of War would be willing to hear the facts of the case from him, so far as he was concerned, and that much time might be saved; but I found that he was indisposed to talk with him on the subject. In some stage of this matter, I may have displayed too much tenderness for a brother officer; in such a case I would sooner *suffer wrong* than *do wrong*. I now insist that I did not authorize the order as given to Dr. Carmichael, and that Col. Huger in construing my letter into  
 384 authority for him to give such an order, committed an error of judgment; the order to Carmichael was never approved by me. When Col. Huger informed me of Anderson's claim under his assignment, and of his action in the case, not acknowledging, but virtually repudiating it, I approved that, and heard no more about it until my report to you of the 27th January, 1851; that report stated that no contracts had been made for shot from the last appropriations; that no shot had been furnished; that there were no contracts for shot made by this department unfulfilled, and that none were contemplated. With the information I had  
 385 when that report was made, all this was strictly true. I had then and have since recognized no contract, nor do I now. I knew not that Mr. Anderson had gone on to fill Col. Huger's order. This information was received by me subsequently, and was stated in my report of the 19th April. Both reports stated the facts as known to me when they were made, and all the facts, as is my invariable custom in reporting on calls for information from the War Department. I saw then no inconsistency between the reports, or between them and my verbal communications, requiring explanation, and I am compelled to say that I see none  
 386 now. The foregoing will show, I think, that although I had no objection to Dr. Carmichael's obtaining work on shot and shells from time to time, to a reasonable extent, if he could make a bargain with Col. Huger on satisfactory terms, I never gave him an order, or authorized or approved the one he received, and that in all my subsequent conversations and reports to you on the subject I had reason to suppose that Col. Huger had repudiated Dr. Carmichael's transfer of his order; that no evidence of any deliveries or estimates of funds in payment of work under that order had been received, and that consequently I had good reason  
 387 to believe that the whole matter had ended with Col. Huger's repudiation of the transfer, and Dr. Carmichael's inability otherwise to execute the order.

I am, sir, respectfully, your ob't serv't,

G. TALCOTT,

*Bt. Brig'r Gen'l, Col. of Ordnance.*

After the reading of the foregoing papers, the witness said: In my communication with Gen. Talcott in the presence of Mr. Anderson, before stated, I said, the question is whether an order of the department has been disobeyed, or whether false reports 388 have been made to the department; I will explain what I meant by this disobedience to which I then referred; shortly after (immediately after, I believe) receiving the written report of the 27th January, understanding that contracts had been made by the Ordnance Department without the sanction of the Secretary (of which fact, however, I know nothing), and not knowing that there was a regulation of that bureau requiring the sanction of the Secretary to all contracts, I determined to make such a regulation, and accordingly prepared one; it struck me, however, that if it was addressed to the Ordnance Department alone, it might be offensive to General Talcott, and I made it applicable 389 to all the bureaux which make contracts for supplies, although it is not so necessary for the others, as few of their contracts, I believe, are made in this city; I accordingly issued an order on the 29th January, requiring that all contracts made by any of the bureaux in this city, exceeding \$2,000, should be first submitted to the Secretary; when I had the conversation with Gen. Talcott, and learnt that shot was making, and being at that time ignorant at what time the contract had been made, I supposed it possible it had been made since the adoption of that regulation, and *that* was the disobedience I referred to; as the contract was made, or what was done was done prior to the 29th January, it was not a 390 disobedience of that order.

And then at 3 o'clock the court adjourned, (and on account of the amount of the record of this day's proceedings,) to meet to-morrow at 12 o'clock.

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12 o'clock, July 2, 1851.

The court met pursuant to adjournment.

Present all the members, the Judge Advocate and General Talcott.

The proceedings of yesterday were read over.

Charles M. Conrad, Secretary of War, a witness for the prosecution.

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*Direct examination* continued:

The witness said before proceeding further with his testimony this day, he desired to correct an error in his testimony yesterday. There had been two copies sent to him by General Talcott of the letter of General Talcott to Col. Huger, dated 6th Nov. To one of these copies was a note appended in the hand-writing 392 of General Talcott. Witness supposed yesterday that this copy with the note appended to it, was the copy sent to him in the report of General Talcott, dated the 27th January. He was now

quite satisfied that this copy was sent in the report from the Ordnance Bureau, dated the 19th April, on Mr. Green's letter; 394 and the other copy, with no such note, was the copy accompanying the report of the 27th January. The witness desired to make this correction, and if necessary to show the evidence on which it was made. But the defence had no doubt of its accuracy, and admitted the correction now made.

Q. Did you at any time, before the 1st Nov. 1850, give to General Talcott any instructions or authority to make contracts or purchases for the Ordnance Department, without obtaining your previous sanction thereto. If so, state when, and, how?

A. No sir, I gave no such authority or instructions.

Q. Did you give General Talcott any instructions in regard to 395 a contract or contracts, about this time, the 1st November, 1850, I mean other than the testimony you have already given, in regard to the Carmichael contract? A. I find, that a few days prior to the conversation between Dr. Carmichael and myself, referred to in my previous testimony, that is to say on the 24th October, 1850, a letter was addressed to me by Johnstone and Ashton of Conn., requesting to be allowed to renew a contract previously made with the department, for making pistol's. This letter was referred to the Ordnance Bureau, on the 24th October, General Talcott reported on this letter, that the writer of the letter had contracted to furnish 30,000 pistols, and that the contract would expire in about a year, and that they desired an extension of the contract. He said, "this course has frequently been pursued in like cases. The only question, however, is whether new proposals shall be invited, or the old contract be extended, and this is a point for your decision." This I quote from the letter which I hold in my hand. I find on this report the following endorsement in my hand-writing, dated the 5th Nov. It is not deemed expedient at present at all events to renew the contract with Messrs. Johnson and Ashton, trials and experiments are now being made of various species of pistol, some of recent invention; and besides, it is deemed safer considering the 396 length of time which has elapsed since the contract with the above named individuals was made, to advertise for proposals for a new contract.

(Signed.)

C. M. CONRAD,  
*Secretary of War.*

This order by an endorsement on it, appears to have been received at the Ordnance Department on the same day. Perhaps it is proper that I should add, that some months after, General Talcott brought one of the individuals, with whom the contract had been made to the office, and stated that they were young mechanics, who had embarked on this undertaking without means, that they had just put up extensive and costly works, relying upon the contracts being extended, as it was customary to ex-

tend them, and that the work they had done was of excellent quality and as cheap, or cheaper than it could be done elsewhere. I think also, the trials and experiments, I had mentioned in fire 399 arms, had taken place in the meanwhile; and in consideration of these circumstances, and the verbal recommendation of General Talcott in that conversation, I authorized him to extend the contract for a limited amount. The paper here presented, shows the last application of the parties, the recommendation of the Colonel of Ordnance, and the decision of the Secretary of War above referred to.

MIDDLETOWN, CON., *March 21st, 1851.*

GENL. G. TALCOTT:

Sir,—The undersigned, partners in the firm of Henry Ashton & Co., do hereby agree that an extension of the pistol contract, as applied for, shall be given to Ira N. Johnson, they having made an arrangement to the satisfaction of all the parties interested in the establishment. 400

Respectfully your ob't serv'ts,

HENRY ASHTON

SILVESTER C. BAILY,

IRA N. JOHNSON,

PETER H. ASHTON,

JOHN NORTH. 401

Endorsements on this letter as follows:

HENRY ASHTON and others.

MIDDLETOWN, CONN., *March 21st, 1851.*

Agree that an extension of the pistol contract be granted to Ira N. Johnson.

“Respectfully submitted to the Secretary of War for his information in regard to the agreement among the parties interested, in case he should determine to extend the contract.”

G. TALCOTT, 402

*Bt. Brig. Genl., Col. of Ordnance.*

ORDNANCE DEPARTMENT, *March, 25th, 1851.*

Received, March 24th, 1851:

If all the parties interested in the manufactory have signed the within consent, the chief of the Ordnance Bureau will take measures to renew the contract for a limited supply of pistols.

*26th March, 1851.*

C. M. CONRAD,  
*Sec'y of War, War Department.*

Received March 28th, 1851.

See letter to Ira N. Johnson this date.

Q. When General Talcott, as you state, a few days after his report to you of the 27th January, 1851, explained to you verbally the object and meaning of his letter to Col. Huger, dated 6th November, 1850, of which he had sent you a copy in his said

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report, did he tell you how Col. Huger had construed that letter, or what he had done under it? *A.* No sir; he never made the slightest allusion then, or at any time, to any action having been taken under his letter to Col. Huger, except, as I stated in my examination yesterday, he did at one time say to me, that perhaps Col. Huger might procure some inconsiderable quantity of shot or shells for experiments.

*Q.* Did he never inform you of the existence of that order to Carmichael before the visit of Mr. Anderson? *A.* He never informed me of it at all, that I recollect, until his report of the 19th April; the first I ever heard of an order or contract, (for I did not know at that time it was in the form of an order,) was from Mr. Green, a day or two before his letter to me of the 5th April; and it was repeated in his letter of the 5th April. In the interview with Mr. Anderson, I said to General Talcott, then there is a contract, or there is shot making, to which he answered, "It seems so." Mr. Anderson mentioned the fact, that it was an order from Huger to Carmichael.

*Q.* When did you first learn of this letter from Col. Huger to General Talcott, reporting the number of 32 pdr. balls which might be provided for the armament of Fort Monroe? *A.* On Saturday evening last, I was informed by a gentleman who is not in any way connected with the department, that he had strong reasons for believing that a letter existed on the records of the department from Col. Huger to General Talcott, in relation to the subject of these shot. I informed the Judge Advocate of that fact, and requested him to apply to the acting head of the Bureau of Ordnance, whether any such letter was there. On Monday morning last, when I arrived at the department, the acting head of the bureau, handed me the letter; that was the first I ever saw of it.

*Q.* Upon what points in Mr. Green's letter was General Talcott directed to report to you? *A.* The only point upon which I wished any report, and the only subject upon which General Talcott and myself covered, was in relation to that part of it which stated that shot were being made at the Tredegar Works, in Richmond, and that some had been delivered at the Monroe arsenal.

*Q.* In your letter to General Talcott, you state that you enquired of him about the actual making of shot and shell at the Tredegar Works some time after his report of you of the 27th January, and in your testimony yesterday you appear to refer this conversation to some point of time previous to that report of the 27th January; how does your recollection now stand on this point, or is it positive? *A.* My recollection of these various conversations with General Talcott is quite distinct, but I have had some difficulty in fixing the precise dates at which they severally occurred, having made no memoranda at the time, and not supposing at the time that I should ever be called upon to testify in regard to them; the first conversation, in which I told him

that I was informed that a contract existed and was held by some one at Richmond, took place, I am pretty confident, some time in December; the next action of the department, of the date of 409 which there can be no doubt, is the order of the 20th January; in regard to the conversation in which I informed him that shot had been made, and was piled up at the foundry, my memory is not accurate, and I can find no memoranda to aid it; when I wrote the letter of the 1st May, to General Talcott, I supposed that that conversation occurred subsequently to the 27th January, and that may possibly be correct; subsequent reflection, however, led me to believe that this conversation occurred a short time prior to the letter of the 20th January, and may possibly in part have occasioned that letter.

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*Cross examination :*

Q. Be pleased to fix as nearly as you can, the date of your first enquiry of General Talcott as to whether supplies of shot and shell were required by the department? A. I have endeavored to fix my memory on that point, but can not do so with any degree of accuracy; shortly after I took charge of the department, which was on the 16th or 17th of August, and during the five or six following months, applications were made by various persons to make shot; some Members of Congress, I think, but I am not certain (I know they did afterwards), spoke on behalf of their 411 constituents; one of the first, if not the first application, was made by Mr Green, but I can not state the time at which his first application was made to me; my first enquiry of General Talcott was probably made shortly after the first application was made to me; probably the same or the next day.

Q. Is it your impression that this enquiry was made in the month of August or September, or what month? A. It was certainly not made in August; it may have been made in September, or early in October; I was absent from the city during a great part of October; my impression is rather that it was made 412 in November, after my return from the north, and if made in November, it was probably made subsequent to the 6th Nov.; I can not say that there are any acts on which this impression is founded; my first impression was that it was prior to that date, but now I think it may have been after.

Q. Are you clear that you repeated that enquiry more than once, and if you did, at what intervals, as nearly as you can fix them? A. I am very confident that I repeated it, though at what intervals I can not say; I recollect stating to General Talcott that I was very frequently asked that question, and that he replied that 413 there was an ample supply on hand; at what precise time this conversation occurred I can not say; it was probably some time in the winter.

And here, at 3 o'clock, the court adjourned, to meet to-morrow morning at 10 o'clock.

Thursday, 3d July, 10 o'clock, 1851.

The court met pursuant to adjournment. Present, all the 414 members, the Judge Advocate and General Talcott.

The proceedings of yesterday were read over.

*C. M. Conrad*, Secretary of War, a witness on the part of the prosecution.

*Cross examination* continued.

Q. Were your inquiries of General Talcott as to the wants of the service, directed to ascertain whether small quantities of shot would probably be required, from time to time during the year, at one or more of the arsenals, or were they not suggested by applications to furnish large or contract supplies and confined to 415 that subject only? A. My applications to General Talcott were general; no reference was made to quantity, nor to the mode of procuring them.

Q. Was not Mr. Green's application to you, in behalf of Mr. F. B. Deane for a contract to furnish large supplies of shot and shell? and did not this occasion your call upon General Talcott? A. Mr. Green did not refer to any quantity. I presume he would have preferred a large contract to a small one; but he never intimated that he would not take a small one. His application did occasion one of the calls that I made on General Talcott, but his 416 was not the only application which caused me to converse with General Talcott on that subject.

Q. Referring now to your testimony in chief, that upon Mr. Green's first application you enquired of Gen. Talcott, "whether the department would be in want of shot *during the current fiscal year, which terminated yesterday,*" (30th June,) and that you were answered that the supply for the year was ample, are you not now satisfied, on reflection, that you could not have repeated the *same question* on several occasions within a short period, and may not that impression have grown out of your conversations 417 with the applicants? A. I do not say that I repeated the same question in a direct form for information, considering his first answer, which I well remembered, as satisfactory; but a number of applications, some verbal and some in writing, being made to me from time to time for shot and shells, I mentioned these applications to him, sometimes rather, perhaps, as a source of annoyance, for I had many of them, and some very unfortunate, with a view, probably, to ascertain whether he was positive that the department would not be making shot, in order that I might give the applicants a satisfactory answer.

Q. Were not your enquiries of General Talcott, touching the 418 making and delivery of shot by Mr. Anderson, directed solely to ascertain whether such making and delivery were under contract with or by authority of the Ordnance Bureau? A. My inquiry was general, whether any shot was making at Mr. Anderson's works for the department, taking it for granted, of course, that none could be making without his knowledge and authority.

Q. Did you understand General Talcott's declaration that there was not a word of truth in Mr. Green's letter, as importing literally that there was no truth in any part of the letter, or as applying to the assertion or implication that a large quantity of shot had been made by his order, or with his knowledge or authority?

The Judge Advocate doubted the strict competency of the testimony which the witness was now applied to, to give. The question put to General Talcott, the answer of General Talcott, and all the facts which could explain his answer, were before the court. Of the meaning, intent and effect of his answer the Judge Advocate supposed the court would judge; but he had no desire to oppose any objection to testimony, and especially to any cross-examination of the present witness.

A. I understood that expression of General Talcott to apply exclusively to that portion of the letter which speaks of the making of shot at the Tredegar works for the War Department, and of the delivery of a portion of them at the Monroe arsenal, in a word, to all in the letter that relates to the making of shot for the department, and the authority by which it was done. Our conversation had no reference to any other part of the letter, as I had not, after his reports to me, the remotest idea of giving a contract to Mr. Deane, or to any one else, for making shot. I understood, of course, General Talcott's declaration that there was not a word of truth in the letter which related to the making of shot at the Tredegar works, to apply to all that was said in the letter on that subject. He said nothing to qualify his remark in any manner.

Q. When, some time after General Talcott's report of the 27th January, enclosing a copy of his letter of 6th November to Col. Huger, it occurred to you that the large quantity of shot of which Mr. Green had informed you might have been made under that order, and you spoke to General Talcott on that subject, was not your inquiry confined to that point, and was not General Talcott's reply to this effect, that it was impossible that Colonel Huger could be procuring from the Ordnance Department, under that order, anything more than such few shot and shells as he might be wanting for experiments and practice? A. My attention was called to the generality and vagueness of the order, and I called General Talcott's attention to that point, and asked him to explain what he intended by it, and suggested that possibly Colonel Huger might construe it to confer authority to make shot. General Talcott seemed to think otherwise, and stated that its object was to enable Colonel Huger to obtain small quantities, as they might be required from time to time, for experiments and artillery practice; that it was possible Colonel Huger might be ordering some such small quantities of trifling value. This is as well as I recollect the substance of what passed between us; I don't pretend to repeat the language.

Q. Was the contract of Johnston and Ashton mentioned in your testimony on yesterday a formal written contract, and for what amount? A. I know nothing of the original contract (having never seen it) except what is stated in General Talcott's report. I took it for granted that what was there stated was 424 correct.

Q. The language of your authority for extending that contract is, "The chief of the Ordnance Bureau will take measures to renew the contract for a limited supply of pistols." Was there any specification of the amount by you, or did you leave it to his discretion to require the pistols to a reasonable extent; and do you know whether the contract has been renewed, and for what amount? A. There was no amount specified by my order as will be seen from it. The words limited supply, which I used, would indicate a less quantity than the original contract. I left the 425 extent of that supply, with that limitation, to General Talcott's discretion. I do not know whether the contract has been extended or not. I have no recollection of any contract having been presented to me for my signature or approbation. I only recollect that some difficulty arose as to the parties with whom the contract should be renewed, the partners in the concern having quarrelled among themselves, in consequence of which the order of the 26th March was given. I do not recollect whether any or what action has been taken by me since that order was given. It is possible a contract may have been presented to me and I 426 may have forgotten it.

*Re-examination*, by Judge Advocate.

Q. Did you read the whole letter of Mr. Green to General Talcott, and especially did you read these words therein: "Whatever authority for doing this work exists, was probably given by the department, or its officers, to Doctor Ed. H. Carmichael, recently a resident of Richmond, but now of the city of New Orleans. During a recent visit to Richmond I was informed the work was done by Mr. Anderson under an assignment from Dr. Carmichael;" and do you mean to be understood by the defence, 427 in your answer on their cross examination, that you so shaped your inquiries to General Talcott that his answer did not cover and apply directly to that part of the letter? A. I will state, sir, that I read the entire letter to General Talcott, as I have stated before, from beginning to end. I certainly did not, in my answer to the question by the defence, mean to be understood as having so shaped my inquiry as not to apply his answer to that portion of Mr. Green's letter contained in this question. I stated that I understood his denial of the truth of what was stated in that letter to apply to all that related to the making of shot at the Tredegar works, and I consider that the order given to Carmichael, and the assignment of that order by Carmichael to Anderson, both of which facts are mentioned in the letter as intimately connected with the making of shot at the Tredegar works, 428

which are owned by Mr. Anderson. My attention was particularly drawn to that part of the letter in consequence of what had previously occurred. I must have laid particular emphasis on 429 that part of the letter, and I recollect that I did.

Q. Do you recollect whether or no you sometimes sent to the Ordnance Bureau, applications which were made to you for contracts for shot, for reports to you, or for answers to the writers? A. My uniform practice is to refer all letters on the business of the department to the bureau to which the business appertains, and when applications are verbal, to converse with the head of the bureau on the subject; of course all applications in writing made to me on this subject, were sent to the Ordnance Bureau. 430

*Cross examination by defence:*

Q. Had your enquiries to which General Talcott replied "I say there is not a word of truth in it," any other shape than you have already stated, viz: that after reading the letter you said, "What do you say to that, General?" A. I meant to say that that was the mode in which I introduced the conversation with General Talcott, after reading to him Mr. Green's letter; but I did not mean to be understood to say that that was the only question that I put to him in the conversation on that occasion; on the contrary, the conversation was a long one, and I put the question 431 in various shapes, having become satisfied that there was some mystery in this business that required explanation.

*John Potts*, a witness for the prosecution, being sworn in due form of law, testified as follows:

*Direct examination by Judge Advocate:*

Q. What office do you hold in the War Department? A. Chief clerk.

Q. Were you sent by the Secretary of War to General Talcott to make enquiries of him in regard to shot; if so, say what enquiry, and what answer he made? A. Some short time after I 432 was appointed chief clerk, which was on the 5th March, of this year, I was sent by the Secretary of War to make some enquiries in regard to appropriations for shot and shells; I went to the Ordnance Office and asked the question what balances of appropriations were available for that object; I received the information from the office; General Talcott asked me if we were going to purchase more shot and shells; I told him I did not know; that I had left Mr. Green in conversation with the Secretary of War, and I presumed the enquiry that I was making had connection with the object of his visit; I asked General Talcott if they 433 wanted shot and shells; his reply was, that they did not; that there were enough on hand to last till the day of judgment, or words to that effect.

Q. You say this was some short time after the 5th March, this year; was it before the 10th April? A. I have no means of de-

terming that; I think it was; I think it was shortly after I came into the chief clerkship of the War Department.

*Captain William Maynadier*, a witness for the prosecution, re-  
434 called.

*Direct examination* renewed:

Q. Did General Talcott, so far as the records of your office show, or you otherwise know, in answer to any of the enquiries to him from the War Department, make any enquiry of Col. Huger or Mr. Anderson, between the 1st January and the 10th April, 1851, in regard to the execution of the order of Huger to Carmichael transferred to Anderson? A. None whatever, so far as the records show, or as I know.

Q. Is this an enquiry from General Talcott, addressed to Mr. 435 Anderson on the 10th April, 1851? A. It is.

The letter here read as follows:

ORDNANCE DAPARTMENT,  
Washington, April 10th, 1851. }

JOSEPH R. ANDERSON, Esq., Washington, D. C.

Sir,—As Col. Huger is absent from his post on leave, and I desire early information in regard to the arrangement, whereby shot and shells are being supplied from the Tredegar Works to Fort Monroe Arsenal, I have to request such information from you. 436 You will oblige me by a statement of the nature of the arrangement, its date, what orders have been given under it, what deliveries have been made, and what are the prices agreed on for each kind of shot and shells; also any other terms and conditions in regard to deliveries.

Respectfully your ob't serv't,

G. TALCOTT,  
*Bt. Brig. Genl., Col. of Ordnance.*

Q. On what day was Mr. Green's letter of the 5th April referred to your office? A. It was received on the 10th April, and I think was referred there on that day, before that letter just read was written to Mr. Anderson; earlier in the day.

Q. What is the regulation allowance of ammunition to be expended in the year, by the garrison at Fort Monroe, in experiments and artillery practice? A. About 100 rounds per company; there are about three companies there now.

Q. Had the commander of the arsenal heretofore procured shot and shells for his own practice and experiments before the 6th November, 1850? A. He had procured them in small quantities.

438 Q. Under what authority? A. He was in the habit of putting in his quarterly estimates, a certain amount to be expended for purposes of experiments, and that amount was remitted, on the approval of his estimates by the Ordnance Office, and its requisition on the War Department for the funds. I recollect some orders to him, specially directing him to make certain experi-

ments; but he always had authority for these experiments, either general, in the way I have stated, or special, as on the occasions 439 mentioned, when he was instructed to make particular experiments.

Q. You have said, that when you drew up from the records of the Ordnance Office, the report to the Secretary of War, dated 22d January, that you had no knowledge of any other contract chargeable on the appropriations for armament of fortifications and for ordnance and ordnance stores and supplies, other than those stated in that report; and you stated at another time that you knew, in the latter part of December, that Dr. Carmichael had received a large order from Col. Huger, which was in the hands of Mr. Anderson; do you desire to be understood that you did 440 not understand this order to be a contract, or how do you desire your testimony in these matters to be understood? A. I prepared the report of the 22d January from the records of the Ordnance Office solely; I then had no idea that the Secretary's call for information, had any reference to the Carmichael transaction, but supposed it to relate to the state of the appropriations exclusively. Congress was in session at that time, and there was much talk about the large amount of army estimates. The committee of ways and means were understood to be scrutinizing those estimates, with a view to their reduction, and I thought the Secretary wanted the information for that committee; hence that part 441 of the letter over and above the answer to the literal and strict call for information. I then knew of General Talcott's order to Col. Huger, I knew of Huger's order to Carmichael, from the copy which had been sent me by Mr. Anderson, and of Carmichael's sale to Mr. Anderson. But I firmly believed that the order in the hands of Mr. Anderson was suspended as to execution, that it constituted no outstanding charge or any appropriation, and that it was at most but a claim on the part of Anderson for a contract, which claim was to be recognized or rejected thereafter. I had received a letter from Mr. Anderson in the latter part of December, inquiring if I knew Col. Huger's 442 reasons for declining to allow him to fulfil the order, and I had been assured by General Talcott that there was no outstanding contract for shot. I remained under this firm conviction, until the letter from Mr. Green was received at the Ordnance Office on the 10th April. I always supposed, and frequently mentioned to General Talcott, that Col. Huger had, in my opinion, exceeded his instructions of the 6th November, in giving the order to Dr. Carmichael, and that his conduct in giving that order, was to me totally inexplicable. These instructions of the 6th Nov. were the only ones that I knew had been given, and I did not 443 learn until the receipt of the Secretary of War's letter of the 1st May, any thing whatever of the interviews and conversations between General Talcott and the Secretary, in relation to the Carmichael transaction. \*The report of the War Department of the

27th January was prepared by me, on information from General Talcott, that there was no contract outstanding for shot. It then first occurred to me that the Secretary might be referring to the order to Col. Huger. I mentioned this to General Talcott, and suggested to him the sending of a copy of that order, although not called for; desiring to answer the call both as to its letter and its spirit.

444 Q. What did General Talcott say when you told him that Col. Huger had exceeded instructions? A. On the particular occasion which I refer to, which was when I read Anderson's letter, in the latter part of December, I dont think that Gen. Talcott said any thing in answer to what I said about Huger's exceeding instructions. But on other occasions, when I told him that I could not account for Huger's strange conduct, in giving such an order, unless something else had passed between them, he assured me that nothing else had passed.

No cross-examination by defence.

Brevet Col. B. Huger, a witness on the part of the prosecution recalled.

*Direct examination by Judge Advocate.*

Q. Is that your letter of the 5th Nov. to General Talcott? A. Yes sir, (letter of witness of 5th November recorded page 181, here shown to witness.)

446 Q. What answer, if any, dated the 6th Nov., as thereon endorsed, did you receive to it? A. I received in answer to this letter, the letter brought by the hands of Doctor Carmichael, dated the 6th November, 1850, which is already on your record, and recited in the charges, and that is the only answer.

Q. You speak in the letter of the 5th November, of a note from General Talcott to you dated 1st Nov. Have you that note, if so, produce it, and if not, tell its contents. A. I have not the note. I received it on the morning of the 5th Nov, by the hands of Dr. Carmichael, it was marked private, and its contents were to this effect.

447 My dear Col.—Do you want any shot or shells for Fort Monroe, if so, what quantity and calibres? That was the whole of it, and this letter was my reply.

Q. How had you, before the letter of the 6th Nov., 1850, from General Talcott, procured shot and shells for experiments and artillery practice? A. Generally if not always on my own order, as I considered I had a standing authority to that effect. When I had orders to make experiments I understood the order to authorize me to get the necessary projectiles, when I made experiments without special instructions, I considered I had general authority.

448 Q. Did General Talcott when you informed him here, in Nov. 1850, of the order you had given Carmichael, instruct you, that you had misconstrued his letter of the 6th November, and that that letter was intended to convey to you only authority to pro-

cure projectiles for experiments and artillery practice? *A.* He made no such statement to me at the time I was here in Nov. when I answered the letters to Kemble and Anderson. But I 449 have heard him often say at different times since, that he presumed in giving that order to Carmichael, that I would only give him such small amounts as I wanted for experiments.

*Q.* When were these last times when he so said? *A.* I did not see General Talcott again after I left here in November, until I came here in April, under an order from the Secretary of War.

*Q.* Was this the time when the Secretary sent for you to enquire of you in this matter? *A.* Yes sir, when I was then here I heard General Talcott mention this, and since.

*Cross examination by defence:*

450

*Q.* After you had repudiated the transfer by Carmichael to Anderson of your order to the former, was not the order of the 6th Nov. available for procuring shot and shells for experiments, up to the date when the Secretary of War forbid the reception of shot and shells from any quarter? *A.* Of course the order was available to me until revoked by the authority that gave it.

And the prosecution here closed.

*William L. Marcy*, a witness on the part of the defence, being sworn in due form of law, testified as follows:

*Q.* Please to state to the court at what period, and for what 451 length of time you held the office of Secretary of War, and whether, during your administration of that department, General Talcott was the chief of the Ordnance Bureau? *A.* I was Secretary of War for 4 years, from March 1845 to March 1849; during the whole of that time General Talcott was at the head of the Ordnance Bureau; part of the time the acting head, and part of the time the actual head.

*Q.* Please to state what was the practical construction of, and usage under the Ordnance Regulations, in regard to the procuring of supplies during your administration, as to the distinction between contracts and open purchases, and whether these last, to such reasonable extent as might be from time to time necessary, were not ordinarily made by the bureau without the special previous authority of the Department? *A.* In relation to contracts, I think there were very few written contracts, or none in the form specified in this article 232, while I was in the War Department; I think most of the supplies were obtained by open purchases; there were some old contracts that were enlarged, extended, having reference to the terms of the original contracts; whether they were in writing I am unable to say; they were 453 made before I went into the office; open purchases were frequently made by the chief of the Ordnance Department, without previous orders from the Secretary of War; there was frequent intercourse between the head of the bureau and the Secretary, and questions in regard to supplies frequently brought up for consultation and advisement, as to the supplies and the price, and after such con-

sideration, I frequently expressed my consent that he should go on and procure the supplies; I can not say I gave express orders; the head of the bureau was required to make every year, estimates 454 of what was required for his branch of the service; when he submitted these, I required explanations; sometimes the estimates were reduced or cut down, but those which I thought required for the public service, I adopted; these were submitted to Congress, and the appropriations made, of course, sometimes with modifications, and then the bureau went on without my requiring him to apply to me for any further particular directions, and expended the money; I suppose the head of the bureau considered that he had my consent, as I had approved the estimates; I do not mean to say that I did not expect to be consulted, as the appropriations were sometimes very general.

355 As to the distinction between contracts and open purchases, I suppose that a contract under this article (132) must be in writing, and in three parts; I believe none such were ever made while I was in the War Department; I don't recollect of any.

*Q.* Was not the term open purchase understood and acted upon as applicable to orders for articles to be thereafter made and delivered, as well to articles already in existence? *A.* Yes.

*Q.* Please to state whether the affairs of the Ordnance Bureau were of magnitude and importance during your administration, 456 and whether they were managed with fidelity or otherwise by Gen. Talcott? *A.* They were of very great importance in their character and extent, particularly during the war; I certainly thought they were managed with fidelity by Gen. Talcott.

*Cross examination:*

*Q.* Was the question ever raised, and your attention ever called, while you were in the War Department (that you now recollect), to the distinction conveyed in the laws and regulations between contracts and open purchases, and the discussions of that question by two of the Attorney Generals? *A.* I am not aware that I knew of any discussion of that subject by the Attorney General; but I did know that there were different classes of contracts; that the laws had imposed different modes of making contracts.

*Q.* If no written contracts in three parts were made during your administration, were not the engagements made to furnish supplies ordinarily called contracts? *A.* I believe they were in common parlance, and without reference to the distinction made by the article. They were called contracts or purchases in common parlance indiscriminately in most instances.

The defence here offered an extract from a letter from the Hon. John C. Spencer, Ex-Secretary of War, to General Talcott, 458 and stated that Mr. Spencer had been summoned as a witness on the part of the defence, and had not been able, on account of ill health, to come. It was read as follows:

ALBANY, June 28, 1851.

"While I was in the department, the difference between an open purchase and a contract was recognized and constantly acted upon; that the strict contract system was believed to be entirely inapplicable to many articles necessary for the ordnance service, and that orders for articles, such as cannon and shot, were, according to my belief, given long ahead of their manufacture at specified prices; and that these were never regarded as contracts because, &c. &c. &c."

The Judge Advocate said he admitted the statement as evidence from Mr. Spencer to the facts stated; but he could not admit in evidence his reasonings upon the law.

The defence here closed. General Talcott asked time until next Monday, at 1 o'clock, to prepare a written address to the court, which application the court granted, and then adjourned to meet on Monday at 1 o'clock.

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WASHINGTON, Monday, July 7th, 1851.

The court met pursuant to adjournment. Present, all the members and Judge Advocate, when the proceedings of the last day were read over, and General Talcott laid before the court the address in writing which is appended to this record, which address was then read to the court by the counsel for the defence, *J. M. Carlisle, Esq.*

The Judge Advocate then stated that he submitted the case to the court without argument on the part of the prosecution.

Whereupon the court was cleared and, in closed session, with mature deliberation upon all the evidence, pronounced the following findings and sentence:

That the accused, Brevet Brigadier General George Talcott, Colonel of the Ordnance Department, is *guilty* of the specification to the first charge.

That he is *guilty* of the first charge.

That he is *guilty* of the specification to the second charge.

That he is *guilty* of the second charge.

That he is *guilty* of the first specification to the third charge, except the words therein, "*and had previously reported to the Secretary of War.*"

That he is *not guilty* of the second specification to the third charge.

That he is *guilty* of the third specification to the third charge.

That he is *guilty* of the fourth specification to the third charge.

That he is *guilty* of the fifth specification to the third charge.

That he is *guilty* of the sixth specification to the third charge.

That he is *guilty* of the seventh specification to the third charge.

And that he is *guilty* of the third charge.

And the court sentence him, Brevet Brigadier General George  
464 Talcott, Colonel of the Ordnance Department, *to be dismissed the  
service.*

(Signed)

D. E. TWIGGS,

*Bt. Maj. Gen. U. S. A., President Court.*

(Signed) J. F. LEE, *Judge Advocate.*

The court adjourned to meet to-morrow at 10 o'clock.

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Tuesday, 10 o'clock, July 8, 1851.

The court met pursuant to adjournment. Present, all the members and Judge Advocate. The record of yesterday was read and approved, and the court adjourned without day.

(Signed)

D. E. TWIGGS,

*Bt. Maj. Gen. U. S. A., Pres't Court.*

(Signed) J. F. LEE, *Judge Advocate.*

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Under the circumstances of the case, the undersigned, member of the General Court Martial, respectfully recommends the accused to the clemency of the Executive.

(Signed)

J. J. ABERT,

*Colonel Corps Topographical Engineers.*

EXECUTIVE MANSION, July 8, 1851.

The foregoing proceedings of a court martial, for the trial of Brevet Brigadier General George Talcott, having been laid before  
467 me, and having been by me duly examined and considered, I hereby confirm the same.

(Signed)

MILLARD FILLMORE.

## GEN. TALCOTT'S DEFENCE.

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*Mr. President and Gentlemen of the Court :*

This occasion, I doubt not, is to you, as it is to me, full of interest and solemnity. If I feel the unspeakable value of an honorable name, so likewise do you. If I have heretofore worn mine with an honest pride, so has each one of you. And though it is my fortune and not yours, to be summoned now to defend my right to this priceless possession, after having borne it unquestioned up the hill of life, across the narrow table land which lies at its summit, and far downward in the path that leads to the vale below; yet do I feel and know that this contest has stirred in the breasts of my judges something of that earnestness which fills my own.

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It is not enough that I have been sustained by the consciousness of my own rectitude; that I have looked forward from the beginning with unshaken confidence to the issue of this investigation; that I now count upon your justice to accord to me a full and ready acquittal of the charges laid against me. There are wounds which it is not in the power of human justice wholly to heal. Such a wound is this arraignment before my peers, and in the face of my country, to answer to a charge of the detestable crime of willful and deliberate falsehood; a crime which poisons the very spring and fountain of common honesty.

It is this which gives to these charges their envenomed and 470 immedicable sting. It is to this that I shall most earnestly address myself in these remarks; and if I shall fail to sustain myself, not merely against the technical specifications to which I am to answer, but against all doubt, and all suspicions, then, indeed, will I have failed to attain the object which, at this moment, I desire above all earthly things.

I am not insensible to the gravity of the other charges preferred against me; but you will require no word of explanation from me to make you comprehend how insignificant they appear to me in comparison with that which not only imputes to me a military offence, but impeaches my personal honor as a private gentleman. It is my purpose to examine them each, and to rely upon no merely technical defence as to either.

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For the result of this trial it would be sufficient for me to show that neither of these charges has been clearly and specifically established, by irresistible proof, beyond all reasonable doubt.

Showing this much and no more, I should be entitled to an acquittal. But I desire that this paper, side by side with the accusations against me, shall exhibit their complete refutation, not in form only, but in substance and spirit; and to this end it is necessary that, even at the risk of being tedious, I should review in detail every act and declaration which has been arrayed against me, from the beginning to the end of the period covered by the charges and specifications. I am not unconscious that, upon such a review, it is possible that very different conclusions may be reached by different minds, though actuated perhaps by the same desire to discover the truth. In my commentary, therefore, upon the extraordinary inferences which have been drawn, in a high quarter, from circumstances which, to say the least of them, are surely not irreconcileable with pure and innocent intentions, I shall be far from imputing any malicious or unfair motive to the mind which has colored them with the dark hues of infamy and guilt. I am not now to learn for the first time that there is a disease which sometimes, though rarely, infects the most honorable minds, but usually by contact with baser spirits; a disease of jaundiced suspicion, which no sooner is communicated to its subject than "trifles light as air" become "confirmation strong as proofs from holy writ." You, sir, and gentlemen, will approach this subject, I am sure, with no such foregone conclusions. You will approach it remembering that your inquiry is for the motive and intention of a man whose life

473 has not been spent in holes and corners, but who has walked openly, and in the light of day, upon the same theatre which your own footsteps have marked with such distinguished honor; a man who, if he has in these transactions entered the dark and tortuous path of infamy, has, without any imaginable motive, suddenly turned his back upon the object of his pursuit through life, and thrown away in the merest wantonness, a treasure for which that life would have been too small a sacrifice.

And here, better than elsewhere, I may invite your attention to that which can not be disputed, and which, at the outset, pours a flood of light over the whole field of investigation. I mean the total absence of the imputation, or fair suspicion, of any motive for the commission of the offences which are charged against me.

I am charged with violating the 132d article of the Ordnance Regulations, in approving and allowing a contract, in relation to which not only is it not charged that I had any interest, but upon the state of facts, as you will see when you come to apply them to this question, utterly repugnant to and irreconcileable with any such interest.

476 I am charged with willful disobedience of orders and instructions from the Secretary of War, when, upon the same state of facts, no conceivable motives can be assigned for such disobedience.

And finally, I am charged with repeated falsehoods and false

reports, when not only the same entire absence of motive is apparent, but when the veriest dolt on the earth must have seen that imminent, inevitable detection stood ready at his right hand, and 477 open shame was staring him in the face.

Am I that monstrous anomaly in human nature, so to act as to outrage every rule of human action? Or are you not to try me as a MAN—to examine my conduct, holding those great rules and springs of action as applicable to me as to yourselves. So manifest and so impossible to be passed over does this great gap in the case appear to me, that I can not but suppose that those who framed these charges, and who considered them worthy of your attention, must have been helped across it by the unworthy suspicions of some of those mysterious personages "*not connected in any manner with the department,*" who, it would appear by the 478 testimony of the Hon. Secretary, have stood ready even during the progress of my trial, to make suggestions to him that other facts existed than those which his vigilance had suspected, and that those facts were of importance to be searched for and found. I refer particularly to the letter of Col. Huger, *discovered* in its regular place among the files of the department upon the suggestion of "*a gentleman not in any manner connected with the department.*"

I proceed now to an examination of the charges and specifications in detail.

## CHARGE I.

479

*Violation of the 132d Article of the Regulations for the Government of the Ordnance Department.*

Upon this charge I remark first, that it alleges that I have violated an article which expressly, and by its terms, purports to regulate the conduct of officers and agents of the Ordnance Department, inferior to the chief of that department, and which neither by its terms, nor by any fair implication, lays any injunction upon the chief of the department, or prescribes any rule for his conduct. If this be so, it will require no argument to show that it is not legally or logically possible that I can be guilty of 480 a violation of that article, upon any state of facts whatever. A man can not violate a law which does not prescribe a rule of conduct for him; for, as to him, it is no law. The language of the article is as follows:

"No contract for the service of the Ordnance Department shall be made by any officer or agent thereof, *except by special authority from the Chief of the Ordnance Department,* sanctioned by the Secretary of War: and all officers or agents making contracts shall strictly observe the provisions of the laws on that subject. (See appendix No. 2.) Contracts shall be made in 481 triplicate, one of which shall be forwarded to THE CHIEF OF THE ORDNANCE DEPARTMENT, at the date of the contract, that it may

be deposited in the office of the Second Comptroller within ninety days thereafter, as the law directs."

- 482 The question is *to whom* is this command addressed? The *persons to whom* it is addressed are directed before making any contract, to *obtain my special authority*.

Can I then be *one of those persons*? Not unless the absurd construction be given to the article, that before making a contract I shall take care to *get my own special authority* to do so? The persons to whom it is addressed are commanded to *forward* one copy of the contract *to me*. Can I myself, then, be one of those persons? Not unless the regulation has imposed upon me the duty of inventing some mode by which I can "forward" one copy of the contract to myself.

- 483 If, therefore, I had made a contract, and if the making of the contract was unauthorized and improper, surely nothing can be clearer than that my offence, if any, is not a violation of the 132d article; and consequently, that I am not guilty of the first charge.

But, in fact and in law, I made no contract. Not only did I make no contract in the sense, and within the terms of that article, but I made no contract in law or in fact, in any sense whatever, general or special. Nor, indeed, does the specification under this charge impute to me that I made a contract. For, 484 first, it distinctly charges that a contract was made by *Colonel Huger*, under the authority of my letter of the 6th November, (of which I shall speak hereafter); then, *that I, fifteen* days afterwards, being informed of this, and "did allow and approve THE ACT of the said Huger," and concludes as follows: "THEREBY permitting and sanctioning a contract, &c." So that, the charge being that *I* made a contract, the specification in support of it sums up all the facts—with a "THEREBY"—in a totally different offence, to wit: the subsequent approval of a contract made by another.

- 485 But, in point of fact, as I shall show you, there was not either prior authority or subsequent assent by me.

1st. As to previous authority. The specification sets out *the contract and the supposed authority*. Can it be necessary to do more than to collate these two written papers, and side by side to compare them, in order to decide at once that *that order* is no authority for *that contract*?

- No one can have read them without expecting that if the making of that contract was to be charged to me, some other or further authority would be proven than what is contained in that 486 letter. Even the Secretary of War, to whom a copy of it was communicated in my report of the 27th of January, did not so understand it. In his testimony on that point he says: "This answer, (viz. the Report of the 27th January, enclosing a copy of the order of the 6th of November,) being PERFECTLY SATISFACTORY, I ceased to think on the subject until my attention was again

*called to it a short time after, by Mr. Green AGAIN mentioning the shot being made at the works at Richmond, when it occurred to me 487 THAT POSSIBLY Colonel Huger might be making shot under that order of the 6th of November."*

From this testimony of the Secretary of War himself two things result conclusively, viz: 1st. That the Secretary of War, who, be it remembered, had been previously informed on two distinct occasions, by Mr. Thomas Green, that "the Tredegar works had a large contract for shot for the War Department," and that "a large quantity of shot was making at the Tredegar works in Richmond, owned by Mr. J. R. Anderson; and that a considerable quantity was piled up in the foundry yard, or somewhere about the foundry;" and who had his suspicions aroused, 488 and his mind turned directly to the investigation of this very point, received from me, and read, an official copy of that letter of the 6th of November, without imagining that it could be construed as authority for the alleged contract, or could even tend to render it probable that the information he had received *had any foundation* whatever until some time afterwards, when, with the aid of Mr. Thomas Green, "*it occurred to him that POSSIBLY Colonel Huger might be making shot under that order.*" And secondly, that whereas it is now charged against me that the authority assumed in that order was usurped in violation of the regulations because not sanctioned by the Secretary of War, the Secretary himself has here testified before you, on oath, that 489 my report communicating to him that I had issued such an order, and transcribing the order word for word, and letter for letter, was by him considered "PERFECTLY SATISFACTORY," and that he "*ceased to think upon the subject. How could this be if he did not understand,* as I did, *that I had the authority to issue that order?* If any *sanction of his*, previous or subsequent, express or implied, were necessary, has he not here on oath placed it upon your record in the declaration that the report communicating that order was "*perfectly satisfactory*" and that he "*ceased to think on the subject.*"

Hear also what is said by Capt. Maynadier, the principal assistant of the bureau, and a witness for the prosecution, not on his cross-examination, but while in the hands of the learned and gallant Judge Advocate. He says: "I always supposed and frequently mentioned to General Talcott, my firm belief that Colonel Huger had *exceeded his instructions*, in giving the order to Dr. Carmichael; and that his conduct in giving that order was to me totally inexplicable;" this, when he was familiar with every word in the order of the 6th of November. Need more be said or recapitulated to show that the contract, if *any contract was made*, was not in *pursuance of the letter of the 6th of November?* and that that letter, according to its fair and natural import, was, 491 in the judgment of the Secretary of War himself, *clearly within my official competency*, and "*perfectly satisfactory to him.*"

492 The question, then, remains, was that order the sole authority given by me to Colonel Huger? Let him answer it himself.

I put the question to him roundly and distinctly: "Had you any further or other authority from General Talcott in reference to the procuring of shot or shells than the order of the 6th November, recited on the charges?" His answer is simply and distinctly, "No." Not only is this testimony entitled to be received as conclusive, on account of the character and standing of the witness, his position here as a witness for the prosecution, and the powerful inducements, if it were possible for him to swerve from the truth, all operating to draw from him his own 493 justification for the order given by him; but there is no particle of evidence upon the record giving you the slightest ground for depriving it of one atom of its controlling and overwhelming weight upon this part of the case. When I inquired of him in an unofficial letter—"Do you want any shot or shells for Fort Monroe? if so, what quantity and calibre?" his reply of the 5th giving me no information to enable me to cause such purchases to be made as I had supposed might be required, my letter of the 6th of November was written, departing in no degree from the idea which I originally entertained, that purchases to a limited extent might be necessary—not expressly or impliedly authorizing or contemplating the complete armament of the Fort, or any 494 large supplies, or any thing like it; but plainly and clearly, in as simple words as language affords, limiting his authority to procuring them, *from time to time*, to a reasonable extent, if they could be had on reasonable terms, and by open purchase only. *This, my sole authority to Colonel Huger, and my sole reply to his letter, was read and considered by the Secretary of War under the peculiar circumstances already adverted to, and was regarded by him as "PERFECTLY SATISFACTORY."*

It is not to be imputed to him that he did not know his duty; that he was not acquainted with the limits of his own powers, and of mine. And if that order contained anything more than I had the clear right to do, it is impossible that it could have been 495 "*perfectly satisfactory*" to him, or that he should have "ceased to think" upon a subject which had brought officially and directly to his notice, the usurpation of power and the violation of law by the head of one of the bureaux of the department confided to his charge. If anything further were needed on this point, it is to be found in the order issued by the Secretary nearly three months after my letter of the 6th of Nov., which directs that the heads of bureaux of the department should not *thereafter* "make or authorize any contracts for supplies, or for arms and munitions of war to be furnished, or for services to be performed, without previously submitting such contracts or propositions to the Secretary of War," an order which was perfectly nugatory 496 and unmeaning, unless indeed such previous sanction had not been required theretofore in procuring supplies to an amount ex-

ceeding two thousand dollars. The Secretary says that he was informed (and it is to be presumed through the proper official channels) that it had been the practice of the Ordnance Bureau 497 not to require such previous sanction in cases exceeding two thousand dollars. The 132d regulation itself, if by a violent construction it can be held applicable to the chief of the bureau, does not express whether the sanction is to be previous or subsequent. If, therefore, such practice did exist, it was a practical construction of the article, tacitly approved, and a sufficient justification of an act done in accordance with it.

To this point also is the testimony of Governor Marcy; nor was there any subsequent approval by me of the order given to 498 Dr. Carmichael. I shall have occasion presently to review my conduct in this respect, with reference to the last charge. At present I content myself with saying that no such approval has been proven. On the contrary, Colonel Huger, who alone could prove it, and had every motive to do so if it had taken place, has testified that I expressed surprise at the amount of the order he had given, when it was first made known to me, and when, as I shall demonstrate at the same moment, all the necessary steps were taken to make that order, or purchase, or contract, or by whatsoever name it may be described, as completely dead, and null, and void, as if it had never for one moment existed. 499

And when afterwards he is pressed by the Judge Advocate on this point, and his attention called directly to the same period by the following question:

Q. "You say on the cross examination, and in answer to the question next before the last, that you had no further authority from General Talcott in reference to the procuring shot and shells than the order of the 6th November; do you mean that you received no authority from him personally here in November, 1850?" He answers, "*None whatever*, unless his approval of my letters to Anderson by Capt. Stone, and mine to Kemble, be considered as such, *which I do not*." There was, then, neither prior authority for, nor subsequent approval of, the order to 500 Carmichael set out in the specification.

#### CHARGE II.

The *Second Charge* I shall despatch in a few words. I venture to affirm that no precedent could have been found for a charge and specification of "*willful disobedience of orders and instructions*," in which it is not charged specifically and distinctly *that orders and instructions were in fact given*, and what those orders and instructions were. Yet such are this charge and specification; not indeed from any fault of the Judge Advocate, for his learning and ability in such matters would enable him to 501 wear the gown of the barrister with equal ease and grace as he now wears the epaulets of the soldier, and the pen is as familiar to him as the sword, but because in fact no such orders or instructions were given, and none have been attempted to be

proven. Indeed the honorable Secretary has virtually abandoned and renounced this charge upon his examination here, 502 when he said that in stating at the interview with Mr. Anderson in April last, that "the question was whether an order of the department had been disobeyed," he supposed that the shot had been made subsequently to the regulation of the 29th of January, and that the order referred to was *that order* only. If he had given an order, or anything like an order, in reference to Dr. Carmichael specifically, it is not possible that his mind would have passed over that order, with which the precise matter was directly connected, to refer the disobedience to a general regulation made long after the order of the 6th November, which had 503 been two months before submitted to him.

But I aver that there was nothing said or done by the Secretary at the interview with Dr. Carmichael in November, which implied or could lead me to imagine that he meant to forbid the making of any purchase, or ordering of any supplies from that person.

The matter before him gave no occasion for the expression of his wishes on that subject. It was a distinct specific application by Dr. Carmichael for a certain specified contract, in redemption of the pledge which he alleged he had received. I aver that I heard nothing of any other application or any other pretension 504 by Dr. Carmichael treated of or decided by the Secretary. His decision was, that there had been no recognition of this pledge, and that he would not recognize it. I certainly so understood it, and so referred to it, as he himself has testified, when next I met him. But in order that there might be no doubt upon the subject, I put the question distinctly, whether any other application than the one specified was in fact made, to which he gave no other answer than by recapitulating the arguments and persuasive suggestions used by Dr. Carmichael in support of his pretensions. And when asked if he had even told Dr. Carmichael in my presence, that the department was not in want of any shot, he can only give his impressions, qualified with the declaration that he "*would not be positive.*" Is this the evidence upon which an officer is to be convicted of "willful disobedience of orders and instructions?"

### CHARGE III.

I pass now to the remaining charge. The first specification has been fully answered in what has been already said. So likewise has the second, except as to the allegation that I knew that Dr. Carmichael was, "not in a capacity to execute the said contract otherwise than through a sale or assignment." To this allegation, it is a sufficient answer that no title or proof has been offered to sustain it; but on the contrary, my conduct in refusing to recognize the transfer refutes it. If I am not deluded in my firm confidence that I am to be tried here at least not by suspicions, but by proofs, it is waste of time to say more. The 506

third specification presents in a solid body the whole array of falsehoods and deceptions charged against me; and the fourth, fifth, sixth and seventh, while they have the appearance of re-enforcing it, are but reproductions of the same array in several detachments. I shall treat them together. There is still another of these black and hateful offences, not indeed specifically laid in the charges, but reserved for the testimony, and performing the preparatory office of introducing me to you at the threshhold of this transaction, under a dark cloud of guilt; not speaking, but in silence uttering a lie, and by my presence maintaining the unfounded pretensions of another. I allude to the circumstances detailed by the Hon. Secretary touching my introduction of Dr. Carmichael to him about the end of October, or beginning of November; a detail which I think you must have heard, without imagining that any human being could see more in it than common courtesy and official duty combined, until the further testimony of the witness disclosed to you that he indeed thought " 'twas strange — 'twas passing strange — 'twas wonderful."

That it really and truly made upon his mind the impression he has communicated to you, no one can doubt; but that it can similarly affect any mind not in some mode prepared to think the worst of me, I can not apprehend. That the chief of a bureau could not venture to accede to the request of a person whose social position itself entitles him to it, to introduce him to the Secretary in order that he might prefer a claim (against which the bureau had already decided of record) without incurring the obligation to interrupt the conversation between them by flat denials of the pretensions of the claimant, at the risk of having his own fidelity suspected, certainly never occurred to me. Still less that such suspicion could arise when, as the Secretary himself has stated, I held the papers, and all the papers necessary to show the whole truth of the case, in my hand before him, in such manner as naturally to lead him to ask at the proper moment, "General, are those the papers?" Nor can I suppose it to be material whether I instantly sprang to my feet and tendered the papers to him, or whether that question being answered in the affirmative, he requested me to hand them to him. This conduct, however, the Hon. Secretary has again and again repeated and reiterated he thought "singular" and "surprising" conduct, for which "he could not account." And being asked by a member of the court whether there was anything in the circumstances authorizing him to suppose that I would not have expressed my opinion if he had not himself reached the same conclusion upon a perusal of the papers, he answered not by specifying any such circumstance, nor by expressly admitting that no such circumstance existed; but as follows:

*"The reason why my surprise at General Talcott's silence when Dr. Carmichael asserted that there had been a written recogni-*

tion of the contract by Mr. Crawford was *increased by his remarking the next day, or a day or two afterwards, that I was right,* was that I had supposed it possible that Gen. Talcott might have  
 512 agreed with Dr. Carmichael in supposing that the letter of Mr. Crawford amounted to a recognition; but when he said he agreed with me that there was no such recognition, my surprise at his silence *increased*, because I did not know how to account for it." From this it would seem either that the Secretary regarded that paper as really susceptible of the constructions, or that he was vacillating between two opinions, that I was either a knave or a fool. If I have seemed to dwell too long upon this point, I beg the court to remember that in order to a just decision upon the remaining accusations, which depend upon conversations between two persons, one of whom is the sole witness, and the other the  
 513 accused, whose statement is no evidence, it is of the first importance that you should as far as possible enter into the minds of the persons respectively, and discover with what preoccupations and upon what foregone conclusions they severally spoke. The question is not what words were uttered, but with what intent and meaning they were uttered. Without enlarging upon this suggestion, I proceed now to shew what ideas occupied my own mind on the various occasions referred to in these specifications; as to which I remark in passing, that if I have correctly noted the testimony, it falls short by one of the number of conversations alleged. It is abundantly clear upon the record, that from  
 514 the date of my letter to Col. Huger of 6th of Novmber, up to the receipt of the letter from Mr. Kemble, I knew nothing of the order given to Dr. Carmichael, nor had I any reason to imagine that *any such* order had been given.

That upon the receipt of that letter, I referred it to Col. Huger, then in Washington on special duty, with directions to reply to it, as I knew nothing of the facts to which it related; that he then first communicated to me what he had done upon the supposed authority of my order.

That I "expressed my surprise" at what he had done; that I  
 515 also, in reference of the offer of the order for sale, told him that "the Secretary of War would be incensed, and justly so if an order for supplies should be hawked about the market."

That I refused my assent to any transfer of it; that he accordingly repudiated the proposed transfer to Mr. Kemble, and the subsequent transfer to Mr. Anderson; all of which occurred within twenty days from the date of the letter to Col. Huger, and promptly after I was informed of what he had done under it. It was now clear that Dr. Carmichael's representations to Col. Huger were unfounded, and could not be fulfilled by him, and  
 516 that in his own hands, the order, if it ever had validity, was null and void. From the date of his assignment to Mr. Anderson, certainly he had no shadow of right to claim the execution of the order so indiscreetly given to him, even if at any time that

order constituted a contract, or imposed any binding obligation upon the department. It was equally clear and indisputable, that by the express terms of the regulation No. 133, if any rights 517 whatever had vested in him as a contractor, they could not "be transferred to any other person or persons" under any circumstances whatever. Was there then any contract outstanding for shot for the Ordnance Department? Who except Mr. Anderson affirms that there was? Does the prosecution, now that the case is known, assert or admit that there was? Does the Secretary of War assert or admit that there was? If he does, by what right, moral or legal, does he, when made acquainted with all the facts, prevent the execution of that contract? As I asserted when in entire ignorance of the fact that any shot had been 518 made, or any attempt to induce Colonel Huger to recede from the position which he had taken under my directions, so I now assert and maintain that no such contract existed. Not only was there never any contract, in the sense of the Ordnance Regulations, or in any strict legal sense, but the particular purchase attempted by Col. Huger, in misapprehension of the terms of my authorization of the 6th of November, had fortunately entirely failed so as to leave no pretence whatever of any obligation upon the government to accept a performance of the order so improvidently given to Dr. Carmichael. And this state of things, be it 519 remembered, was brought to my knowledge simultaneously with the first information of the fact that Col. Huger had given that order. Am I wrong in these conclusions, or either of them? You have before you, in the shape of testimony as to the usage of the department, the incidental expression of the opinion of one of the most distinguished jurists in the country, the Hon. John C. Spencer. When speaking of the usage, he says, "orders for articles, such as cannon and shot, were, according to my belief, given long ahead of their manufacture, at specified prices; and these were never regarded as contracts, because a contract implies an obligation on each side, the one to furnish, and the other to pay. But an order for articles at a specified price, received by a party, creates no obligation on his part to furnish the articles. Nor indeed does it create an *obligation* on the party giving the order, for there is no consideration for it, and it is revocable at any time."<sup>520</sup>

This is not the tribunal or the occasion to enlarge upon this point, nor is it necessary to do more than to refer to it in passing. Certainly there can be no two opinions upon the point that an order to Dr. Carmichael, given with the distinct agreement that 521 it should be executed at a certain foundry, and under a specified superintendence (the freight from that certain foundry being calculated and turned into the price), could not be binding in morals or in law when transferred to another person, to be executed at another foundry, and under different superintendence; above all when, as appears in the case from the statement of Captain

Stone, who at the request of Col. Huger arranged the details with Dr. Carmichael, his attention was at that very time called  
 522 to shot and shells received from the very foundry to which the order was afterwards assigned, and the fact that they were not fabricated satisfactorily remarked upon by Capt. Stone. This last fact, though unknown to me at the time, is material as to the fundamental assumption which lies at the bottom of all these specifications, viz: that there was in truth an outstanding contract, the existence of which I knew, and denied. Nor can it be questioned that if Col. Huger's order in the first instance constituted a contract, neither the proprietor of the Tredegar Works, nor any other person, could acquire any rights whatsoever by a  
 523 transfer or assignment of it, by whatsoever contrivance or indirection the *form of an assignment* might be suppressed or evaded. Col. Huger in his written deposition before the Secretary of War, here given in evidence by the prosecution, states the point clearly and correctly. "Witness directed Capt. Stone to return the power of attorney to Mr. Anderson, and inform him that he considered the power of attorney as in substance an assignment of the order, and that Mr. Carmichael had no right to make such a transfer, and that he, witness, would not recognize it."

An attempt has been made to show apparently, that such evasion is countenanced and admitted at the treasury. Upon this  
 523 I have no farther commentary to make, than to say that if such is the practice, it is a violation of the law, in letter and spirit, and is a strange commentary upon the gravamen of one of those specifications which alleges, as a disgraceful offence, that the public service was "*exposed to the discredit* arising from the sale of a public contract;" an offence which it would then seem the government encourages and protects.

This, then, was the state of things, as made known to me in the month of November, simultaneously with my first information of Colonel Huger's misconstruction of the terms of my letter. The order had become, to all intents and purposes, to affect the department, a mere dead letter. I had no reason to believe, or imagine, that any thing could be done, or would be attempted under it. Being entirely satisfied that Colonel Huger had acted as he has always done, with the best and purest intentions, and with a view to the public service according to his judgment, and that his mere error of judgment had resulted, and could result in no injury to the government, it required a new quality to be infused into my nature before I could for a moment think of  
 526 gratuitously involving him in any difficulty. Not only had I no reason to suppose that anything had been done under the Carmichael order, but so late as the end of December I had the most satisfactory, positive evidence, that nothing had been done. I refer to the correspondence between Mr. Anderson, and Captain Maynadier, in which Mr. Anderson *complains that Colonel Huger will not allow him to execute this order, inquires if Colonel Huger*